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AUTHOR	Miller, Joan; Bieker, Rod; Copenhaver, John
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ABSTRACT

This document presents the Kansas State Department of Education's guidelines to Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA). The guidelines specifically address Subparts A, B, C, and D of the regulations for Section 504 which deal with general provisions, employment practices, accessibility and education. An introduction offers examples of how school systems can discriminate against individuals with disabilities and is followed by definitions common to both laws and a list of acronyms. An overview of Section 504 summarizes each subpart and charts responsibilities under the law of various individuals and groups. The next section compares Section 504, the ADA, and the Individuals with Disabilities Education Act. Eight procedural requirements under the law are then explained. A section on accommodations and services lists strategies under the following categories: environmental, organizational, behavioral, presentation, methodology, and curriculum. A list of 98 effective accommodations and services precedes examples of accommodations for 19 specific disabilities. Twenty-eight common questions and answers conclude the guide. Appendices include: the text of Section 504 and regulations, sample forms, sample accommodation plans, guidelines for student discipline under Section 504, a physical accessibility checklist, recent Office of Civil Rights (OCR) rulings, and important OCR policy letters. (DB)

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Kansas State Department of Education

Section 504
ADA

Guidelines for Educators

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INTRODUCTION

The purpose of the following guidelines is to provide general technical assistance to school staff regarding obligations under Section 504 of the Rehabilitation Act to provide educational services to children who are disabled under Section 504. Many of these same obligations are required by the Americans with Disabilities Act.

Section 504 of the Rehabilitation Act was enacted in 1973. Federal regulations implementing Section 504 were adopted in 1977, and have seven sections; four of which are are covered in this document.

Subpart A. General Provisions
Subpart B. Employment Practices
Subpart C Program Accessibility
Subpart D Preschool, Elementary, and Secondary Education Requirements

"Handicapped individuals" will hereafter be referred to as "Individuals with disabilities" in order to be consistent with current terminology.

For many years, the main area of enforcement of Section 504 concerned employment issues for individuals with disabilities. However, within the last several years, the Office for Civil Rights (OCR) within the U.S. Department of Education has become more active in enforcing the provisions of the regulations regarding the education of individuals with disabilities. This guide focuses on those provisions.

This federal statute prohibits discrimination against any individuals with disabilities by public schools receiving federal financial assistance.

Kansas State Department of Education

DISCRIMINATORY PRACTICES

A SCHOOL DISCRIMINATES WHEN IT:

1. Denies an individual with disabilities the opportunity to participate in or benefit from an aid or service that is afforded students without a disability; e.g., school practice of refusing to allow any student with a disability the opportunity to be on the honor roll; denial of credit to a student whose absenteeism is related to his/her disability; expelling a student for behavior related to his/her disability; refusing to dispense medication to a student who could not attend school otherwise. Dispensing medication should be a team decision, including the parents, school staff, and health care providers.
2. Fails to give the individual with disabilities an equal opportunity to participate in, or benefit from, the aid or service that is afforded others.
3. Fails to provide aids or services to the individual with disabilities that are as equally effective as those provided to individuals without disabilities. Note: *"Equally effective"* means *equivalent* as opposed to *identical*. Moreover, to be *equally effective*, an aid or service need not produce equal results; it must merely afford an equal opportunity to achieve equal results. (Comment to 34 CFR 104.4(b)(2))
4. Provides different or separate aids or services for students with disabilities unless such action is necessary for them to be as effective as the aids, benefits or services provided to other students; e.g., segregating students in separate classes, schools or facilities, unless necessary.
5. Denies a person with disabilities the opportunity to participate as a member of a planning or advisory board strictly because of his/her disability.
6. Otherwise limits the enjoyment of any right, privilege, advantage or opportunity enjoyed by others; e.g., prohibiting a person with a sensory impairment from using a dog guide or service dog at school.
7. In determining the site or location of a facility, makes selections that effectively exclude individuals with disabilities, denies them the benefits of, or otherwise subjects them to discrimination.

EXAMPLES OF DISCRIMINATION

1. A student with a disability is denied recognition as an honor roll student because one class is in the resource room.
2. A student is expelled from school for misbehavior that is related to his/her disability.
3. The school provides a school day that is shorter in duration than that provided to students without disabilities.
4. The school refuses to allow a student with a disability the opportunity to audition for athletic teams, cheerleading, or other extra-curricular activities.
5. The school denies course credit to a student whose absenteeism is the result of a disability.

Guidelines for Educators

6. The school refuses to dispense medication to a student who needs it to benefit from education.
7. The high school counselor fails to provide information about the special provisions of college board examinations to students with disabilities.
8. The school refuses to provide a modified adaptive physical education program for a student who cannot participate in general physical education.
9. The school does not provide an interpreter for a deaf parent to attend a school meeting regarding his/her child.
10. An employee with cancer is assigned work hours that prevent access to chemotherapy treatments.

The next section provides common definitions and acronyms that are mentioned throughout this document.

DEFINITIONS

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THE FOLLOWING ARE TERMS AND DEFINITIONS COMMON TO SECTION 504 AND THE AMERICANS WITH DISABILITIES ACT.

ACCOMMODATIONS – Adjustments or modifications made by classroom teacher(s) and other school staff to enable the student to benefit from their educational program. In some cases a plan should be developed outlining services and/or accommodations.

AFFIRMATIVE ACTION – This concept involves a commitment to positive action to accomplish the purposes of a program. It may involve goals or timetables and specifically outlined steps that will be pursued to make certain that objectives are attained. Section 504 does not mandate affirmative action for disabled people. Rather, Section 504 requires that federal fund recipients ensure "non-discrimination." In the context of civil rights for disabled people, affirmative action must be taken under Section 503, which requires affirmative steps and positive outreach by federal contractors in employment considerations.

AMERICANS WITH DISABILITIES ACT (ADA) – Prohibits discrimination on the basis of disability in employment, public services and transportation, public accommodations and telecommunications. The ADA, which applies to nearly all entities regardless of whether they receive federal funding, expands the mandate of non-discrimination on the basis of disability established under Section 504.

AUXILIARY AIDS – Devices or services that compensate for a disabling condition. The term includes qualified interpreters or other means of communications such as telecommunications devices for the deaf (TDDs); qualified readers, taped texts or other devices for visually-impaired people; adaptive equipment; and other similar services and actions.

BARRIER-FREE ENVIRONMENT – An environment that contains no obstacles to accessibility and usability by people with disabilities. Section 504, which emphasizes the concept of program accessibility, does not mandate a barrier-free environment in existing facilities. Barriers may exist under Section 504 as long as they do not impinge on program accessibility. New construction and alterations by federal funds recipients must feature a barrier-free environment, however.

CONTAGIOUS DISEASES – Contagious diseases, such as tuberculosis and AIDS, are considered disabilities under the Rehabilitation Act and the Americans with Disabilities Act. People with contagious diseases are protected by Section 504 against discrimination, provided they can perform their jobs and do not pose a threat to the health and safety of others. Congress amended Section 504 to reflect this when it passed the Civil Rights Restoration Act.

ELIGIBILITY – When a district learns that a student may have a disability, the district must decide whether the student is a qualified individual under Section 504. Therefore, the school district must have procedures for determining whether a student has a physical or mental impairment which substantially limits one or more major life activities. These procedures should include a review process and a decision point which answers the following questions:

- Does the student have a physical or mental impairment?

• Does the impairment substantially limit a major life activity?

If the referral provides evidence as to the possibility of a mental or physical impairment, the school district must proceed with a review of the student's current educational performance, medical and educational records and reports from parents, teachers and administrators to determine if further evaluation is necessary.

The determination of appropriate education for a qualified individual must be made by a group of persons knowledgeable about:

- The student's individual needs;
- The student's school history;
- The meaning of evaluation data; and
- Placement options.

Depending on the type of disability present, the persons at this meeting may include a school counselor; school psychologist, or school nurse. Good sources of information include documentation of interventions in the general classroom, discipline records, scores on group achievement tests and special health care plans.

If the school district determines that the student does not have a physical or mental impairment which substantially limits one or more major life activities, and takes no further action, the school district must ensure that parents or guardians are informed of their procedural due process rights.

EQUAL OPPORTUNITY – Equal opportunity for qualified people with disabilities is an objective of Section 504. This goal translates into the achievement of accessibility, the provision of benefits, services and aids that are equally effective for disabled and non-disabled people, and programs and activities that are otherwise free from discrimination based on disability. Equal opportunity, and not merely equal treatment, is essential to eliminating discrimination. Identical treatment will not in some cases afford people with disabilities the adjustments or accommodations required to achieve equal opportunities to work, learn or receive services.

FACILITY – All or any portion of buildings, structures, equipment, roads, walks, parking lots or other real or personal property or interest in such property (Appendix III: B: 1, §41.3 (f) of the government wide Section 504 regulations.) The Access Board interprets the term "facility" to mean an entire site, as opposed to a "building" that may be located on a particular site.

FEDERAL FINANCIAL ASSISTANCE – Any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of: (1) funds; (2) services of federal personnel; or (3) real or personal property or any interest in or use of such property, including (a)

transfers or leases of such property for less than fair market value or for reduced consideration; and (b) proceeds from a subsequent transfer or lease of such property if the federal share of its fair market value is not returned to the federal government (Appendix III: B:: 1, §41.3(e) of the government-wide Section 504 regulations).

INDIVIDUAL WITH A DISABILITY UNDER SECTION 504 – Any person who: has mental or physical impairment which substantially limits one or more of a person's major life activities; has a record of a physical or mental impairment that substantially limits one or more major life activities; or is regarded as having a physical or mental impairment that substantially limits one or more major life activities.

MAJOR LIFE ACTIVITY – Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. When a condition does not substantially limit a major life activity, the individual does not qualify under Section 504.

MOST INTEGRATED SETTING APPROPRIATE – An overriding objective of Section 504 is participation in programs and activities by, and delivery of services to, individuals with disabilities in the most integrated setting appropriate. This requirement seeks to minimize the separate or different treatment of individuals with disabilities, except in individual cases where such treatment is necessary to ensure participation.

Many individuals with disabilities will require few or no adjustments or modifications by the recipient to participate in programs and activities. Unnecessarily different treatment in such cases would violate Section 504. Thus, the most integrated setting appropriate for many disabled people will be the same setting in which non-disabled people function. For others, it will include changes and adjustments (as slight and as few as possible) necessary to achieve effective participation.

OFFICE FOR CIVIL RIGHTS – The Office for Civil Rights in the former Department of Health, Education and Welfare wrote the first federal regulations to implement Section 504 and coordinated government-wide enforcement of the law. When HEW disbanded, the Departments of Education and Health and Human Services each formed an Office for Civil Rights, which are now responsible for enforcing Section 504.

The three primary responsibilities are investigating complaints, conducting compliance reviews, and providing technical assistance. There are 12 regional offices located throughout the United States. The regional office for Kansas is in Kansas City, Missouri, Region VII. Region VII serves Iowa, Kansas, Missouri, North Dakota, South Dakota, and Nebraska.

Office for Civil Rights
Department of Education
10220 N. Executive Hills Blvd. 8th Floor
Kansas City, Missouri 64153

(816) 880-4200
(816) 891-0582 (TDD)
(816) 891-0644 (FAX)

PHYSICAL OR MENTAL IMPAIRMENT – (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal, special sense organs, respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or physical disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; past drug addiction and alcoholism (Appendix III: B: 1, §41.31 of the government-wide 504 regulations).

PROGRAM ACCESSIBILITY– "Program accessibility" is perhaps the key term in Section 504 because federal funds recipients must ensure their programs and activities are accessible to and usable by persons with disabilities. Program accessibility is a flexible principle allowing recipients to comply based on individual responses to their existing conditions and the needs of their disabled participants. In many instances, programs and activities may be made accessible through slight modifications and adjustments in procedures, practices and policies. In others, building renovation or construction may be required. But structural change is required only if program accessibility cannot be achieved effectively through other means ((Appendix III: B: 1, §41.56-41.57 of the government-wide Section 504 regulations).

PROGRAM OR ACTIVITY – In the context of Section 504, this includes all operations of state and local agencies that receive federal funds. This includes colleges, universities, and school systems.

PUBLIC NOTICE – All school districts are required to provide public notice and internal notice (i.e., to staff and students) stating they do not discriminate on the basis of a disability.

QUALIFIED INDIVIDUAL WITH A DISABILITY – An individual who (1) with respect to employment, is a disabled person who, with reasonable accommodation, can perform the essential functions of the job in question; and (2) with respect to services, is a disabled person who meets the essential eligibility requirements for the receipt of such services. Also, the final regulations for HHS recipients (Appendix III: C) define qualified disabled person with regard to education as a disabled person who meets the academic and technical standards requisite to admission or participation in the institution's program and activities.

Factors such as safety may be considered in determining whether an individual with disabilities is qualified. Such considerations are appropriate and are not considered violations of Section 504 as long as they are based on facts relating to the individual's qualifications, rather than assumptions or stereotypes.

Example: In its decision in *Southeastern Community College v. Davis*, the U.S. Supreme Court held that "a disabled person may be required to meet...the necessary physical qualifications" to be qualified for participation in a program or activity. The Court held that legitimate physical requirements may be taken into account in determining someone's qualifications for program participation, and stated that "[a] n otherwise qualified person is one who is able to meet all of a program's requirements *in spite*

of his handicap" [emphasis added].

REASONABLE ACCOMMODATION – Is the principle by which an organization's employment opportunities must be made accessible to qualified individuals with disabilities. Under Section 504 (and the ADA), organizations are required to make certain adjustments to the known physical and mental limitations of otherwise qualified disabled applicants and employees, unless it can be demonstrated that the accommodation would impose an undue hardship on the operation of the program (see definition of "undue hardship"). For example, an employer might be required to rearrange office furniture to allow for passage of a wheelchair, relocate offices or classrooms to a ground floor or other accessible location, or relieve a deaf file clerk of phone responsibilities.

Under Section 504, accommodations may be required to ensure equal employment or educational opportunities for individuals with disabilities. However, no essential job functions need be altered or new jobs created as an accommodation for individuals with disabilities (Appendix III: B: 1, §41.53 of the government-wide Section 504 regulations).

RECIPIENT - Means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

SECTION 504 – Section 504 of the Rehabilitation Act guarantees specific rights in federally funded programs and activities to people who qualify as disabled. Section 504 states: "No otherwise qualified individual with a disability in the United States…shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance…"

SECTION 504 COORDINATOR – School districts employing 15 or more persons must assign a person to coordinate compliance with Section 504 regulations. It is recommended that all school districts appoint a 504 Coordinator. (It is also recommended that the same person serve as the ADA coordinator.)

SELF-EVALUATION – Section 504 requires federal fund recipients to evaluate their programs and activities to determine the extent to which they require modification to ensure participation by individuals with disabilities. This process of internal analysis has been termed "self-evaluation." (See samples in the "Sample forms and Policy Section")

STUDENT INTERVENTION TEAM – A group of individuals knowledgeable about a student who work together in trying modifications and accommodations to help the student succeed in school. Every effort should be made to keep the student in the general education program. A referral is made for an evaluation after general education interventions have failed to assist the student.

SUBSTANCE ABUSE – Alcoholics and past drug addicts are considered to be individuals with disabilities and thus afforded employment discrimination protection under Section 503 and 504 of the Rehabilitation Act. However, this does not apply in cases where a person's current use of alcohol prevents him or her from performing the duties of the job or whose employment, by reason of such

current alcohol use, would constitute a direct threat to the property or safety of others.

The Americans with Disabilities Act amended Section 504 to protect only former drug abusers who have successfully completed (or are in) rehabilitation programs and people mistakenly identified as drug users. Current users of illegal drugs are not covered.

TELECOMMUNICATIONS RELAY SYSTEM – Telephone transmission service that enables an individual with a hearing or speech impairment to communicate by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of someone who does not have a hearing or speech impairment.

TRANSITION PLAN – If a recipient determines that structural modifications are necessary to meet Section 504's program accessibility requirements, it must develop a scheme specifying the steps and timetable necessary to complete such changes. This document is termed a "transition plan."

UNDUE HARDSHIP – A recipient must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with disabilities applicant or employee unless it can demonstrate that such accommodation would impose "undue hardship" on the operation of its program. The regulations provide no precise criteria for determining when an accommodation becomes an undue hardship (Appendix III: B: 1, §41.53 of the government-wide Section 504 regulations).

UNIFORM FEDERAL ACCESSIBILITY STANDARDS (UFAS) – Are the standards the federal government uses to meet Section 504's accessibility requirements for the design, construction and alteration of buildings. UFAS were issued in 1984 by the two federal agencies designated in the Architectural Barriers Act: Department of Defense (for Military bases); Department of Housing and Urban Development (for public housing). Federal funds recipients are considered to be in compliance with Section 504 if they follow UFAS, but only federal agencies are required to use them. Recipients may also satisfy Section 504 by following state, local or other codes.

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COMMON ACRONYMS

ADA - Americans With Disabilities Act

ADD - Attention Deficit Disorder

ADHD - Attention Deficit Hyperactive Disorder

AG - Annual Goal

AP - Accommodation Plan

BD - Behavior Disorder

CD - Cognitive Delay

CFR - Code of Federal Regulations

CHAPTER 1 - Chapter 1 of Title 1 of ESEA, provides financial assistance to states and eligible agencies to deliver supplemental services to at risk students.

D - Deaf

DD - Developmental Disabilities

ED - Emotionally Disturbed

ESY - Extended School Year

FAPE - Free Appropriate Public Education

FERPA - Family Educational Rights and Privacy Act

HI - Hearing Impaired

IDEA - Individuals With Disabilities Education Act

IFSP - Individualized Family Service Plan

LEA - Local Education Agency

LRE - Least Restrictive Environment

LD - Learning Disability

OCR - Office for Civil Rights

OHI - Other Health Impaired

OT - Occupational Therapy

PT - Physical Therapy

RRC - Regional Resource Center

SEA - State Education Agency

STO - Short Term Objective

TAT - Teacher Assistance Team

TTY - A telecommunication device for the deaf (Teletypewriter)

VI - Visually Impaired

§504 - Section 504 of the Rehabilitation Act

OVERVIEW

Guidelines for Educators

Section 504 is a civil rights statute prohibiting discrimination on the basis of disability. It is similar to other federal civil rights statutes such as Title VI (race) and Title IX (gender). However, Section 504 focuses on disability discrimination.

If a school receives any federal financial assistance, all programs or activities of the school are covered by Section 504 obligations.

No state or federal funding is provided to assist in complying with Section 504. **All costs are the obligation of the local school.** Many schools have established a Section 504 line item in their general fund budget to cover necessary accommodations for individuals with disabilities.

ELIGIBILITY

The regulations implementing Section 504 have several major areas of emphasis: Subpart A – general provisions, Subpart B – employment practices, Subpart C – program accessibility, and Subparts D and E — requirements for preschool, elementary, secondary, and post-secondary education. This manual focuses on Subparts C and D.

SUBPART A: GENERAL PROVISIONS

This section outlines the non-discrimination responsibilities of schools that receive federal funds. No person, on the basis of disability, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program that benefits from federal funding.

ALL PUBLIC AGENCIES MUST COMPLY WITH THE FOLLOWING REQUIREMENTS:

- Provide written assurances of non-discrimination when applying for federal funds.
- Take steps to eliminate discrimination against individuals with disabilities.
- Appoint a 504/ADA coordinator for schools with 15 or more employees to coordinate efforts to comply with these laws.

— BEST PRACTICE —

Even if a school has less than 15 employees, they should appoint a Section 504/ADA Coordinator.

- Provide public notice regarding non-discrimination and responsibilities.
- Make available a grievance procedure.
- Conduct a self-evaluation of their programs and activities to ensure discriminatory practices are eliminated.

SUBPART B: EMPLOYMENT PRACTICES

No qualified person shall, on the basis of his/her disability, be subjected to discrimination in employment by any program or activity that receives federal funds or is a public entity.

The school must make reasonable accommodations for qualified applicants or employees with known physical and mental impairments unless the accommodation would impose an undue hardship on the operation of the school's program. Examples of reasonable accommodations would include: making facilities accessible to and usable by persons with disabilities, job restructuring, part time or modified work schedules, and acquisition or modification of equipment or devices.

THE REGULATIONS MENTION THE FOLLOWING FACTORS TO CONSIDER IN DETERMINATION OF "UNDUE HARDSHIP."

1. The overall size of the school's program with respect to the number of employees, number and type of facilities, and size of budget;
2. The type of the school's operation, including the composition and structure of its workforce; and
3. The nature and cost of the accommodation needed.
4. The burden of proof is always on the school.

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SUBPART C: PROGRAM ACCESSIBILITY

No individual with a disability shall be denied the benefits of, be excluded from participation in, or be otherwise subjected to discrimination under any program or activity because facilities are inaccessible or unusable. Building and program accessibility is applicable to any individual with disabilities accessing any activities or programs in that school building.

The regulation contains two standards to be used in determining whether programs and activities are accessible to individuals with disabilities. One standard deals with "existing" facilities; the other deals with "new" construction. The term "existing facility" means the facility was in existence or in the process of construction before June 3, 1977, the effective date of the regulation. The term "new construction" means groundbreaking that took place on or after the effective date of the regulation. Existing facility under ADA was January 26, 1992.

> *Leased facilities (mobile units) that are leased or constructed with federal funds are required to meet the standards of new construction. Other leased units are required to meet the standards of existing facilities.*

The standard for a facility existing before June 3, 1977 for 504 or January 26, 1992, for ADA, requires that federally assisted programs or activities operated in that facility must, when viewed in their entirety, be readily accessible. *This standard does not require that every facility or part be accessible, so long as the program or activity as a whole is accessible.* Thus, recipients need not make structural changes to facilities that existed before June 3, 1977 for 504 or before January 26, 1992 for ADA, where other alternative methods are effective in making programs and activities accessible, so long as priority consideration is given to offering the services in the most integrated setting appropriate.

One example of an alternative method in a school would be the relocation of classes, activities or services to an accessible site. Facility alteration or new construction is required to achieve program accessibility only if sufficient relocation of classes, activities or services cannot be housed in an existing facility. In meeting the objective of program accessibility, the school must take precautions not to isolate or concentrate students with disabilities in settings away from students without disabilities.

The regulation requires that all new construction begun after June 3, 1977 for 504, or January 26, 1992 for ADA, as well as alterations to existing facilities, must be designed and constructed so as to make facilities accessible and usable by individuals with disabilities.

SUBPART D: REQUIREMENTS FOR PRESCHOOL, ELEMENTARY, MIDDLE LEVEL, JUNIOR HIGH, SECONDARY EDUCATION, AND ADULT EDUCATION PROGRAMS

Preschool, elementary, middle level/junior high, secondary and adult education programs must take into account the needs of qualified persons with disabilities in determining the aid, benefits, or services to be provided under these programs or activities.

The school must provide a free appropriate public education to students with disabilities in its jurisdiction who are eligible under Section 504/ADA. Instruction must be individually designed to meet the needs of those students as adequately as the needs of students without disabilities. **This standard of what is "appropriate" differs from the IDEA "appropriate" standard which requires the school to design a program reasonably calculated to confer educational benefit. An appropriate education under Section 504/ADA requires that the services be effective and equal.**

Although Section 504/ADA does not require schools to develop an Individualized Education Program with annual goals and objectives, it does require that the school document services and/or accommodations to be provided for each student eligible under Section 504/ADA. If a disability is suspected, a referral should be made, an evaluation conducted, and eligibility determined by a team knowledgeable about the student.

The quality of educational services provided to individuals with disabilities must be equivalent to the services provided to individuals without disabilities. Teachers, administrators, and staff should receive ongoing training in the instruction of individuals with disabilities and be knowledgeable about the disability, appropriate materials and equipment. The Section 504/ADA Coordinator is responsible for developing and implementing staff training.

While implementation of a Section 504 plan is primarily the duty of regular education staff, special education staff may be utilized to assist in the following matters:

1. determining whether a child needs an evaluation;
2. advising of appropriate accommodations and services for an eligible 504 student; and
3. consulting on appropriate implementation of a child's 504 plan.

In other words, a school district may utilize the expertise of its special education staff to assist in carrying out the district's obligations to Section 504 students. Of course, if a child's disability requires the child to need special education and related services, the child should be served under IDEA, rather than Section 504.

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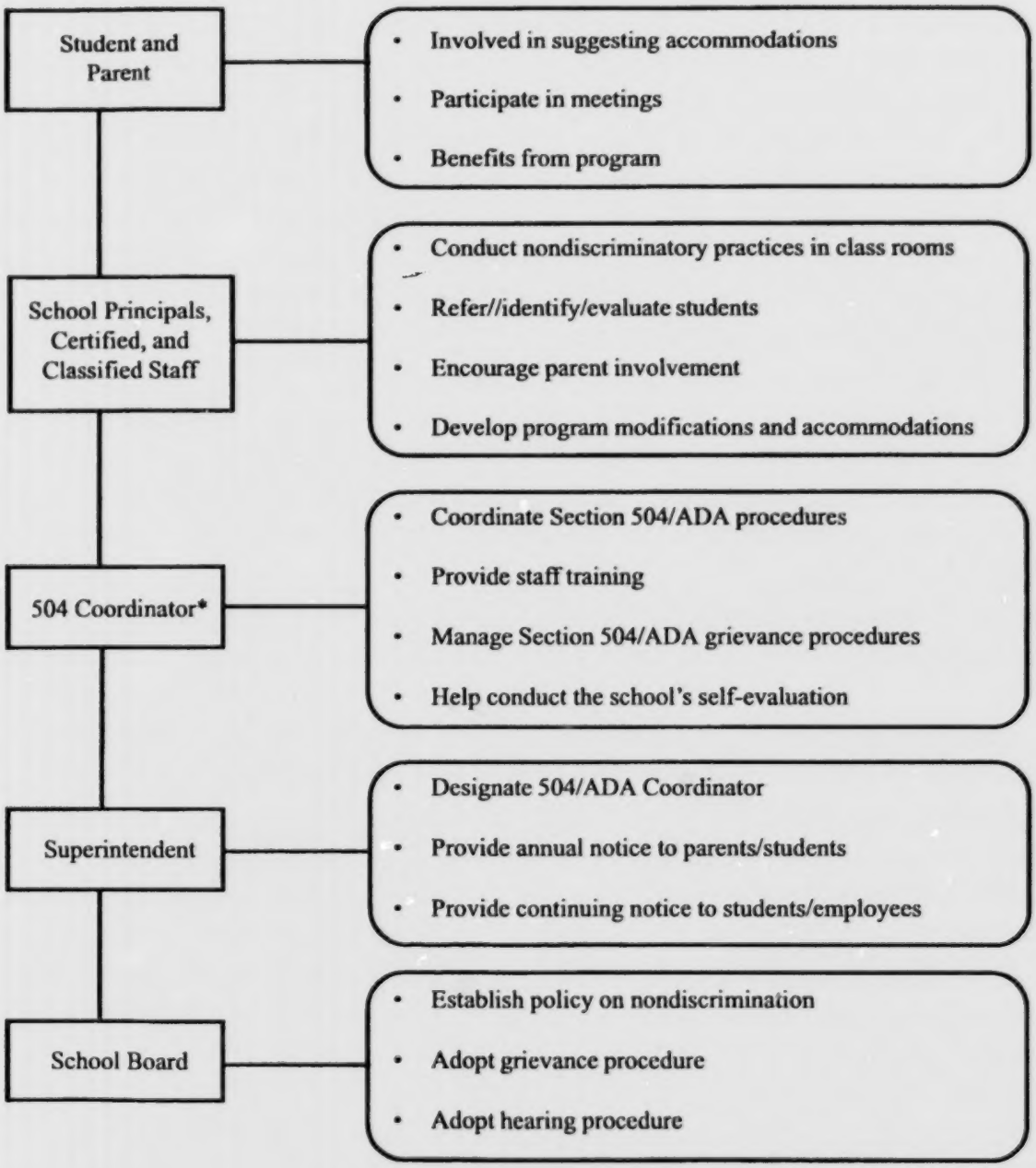
504/ADA OBLIGATIONS


Student and Parent
• Involved in suggesting accommodations
• Participate in meetings
• Benefits from program
School Principals, Certified, and Classified Staff
• Conduct nondiscriminatory practices in class rooms
• Refer//identify/evaluate students
• Encourage parent involvement
• Develop program modifications and accommodations
504 Coordinator*
• Coordinate Section 504/ADA procedures
• Provide staff training
• Manage Section 504/ADA grievance procedures
• Help conduct the school's self-evaluation
Superintendent
• Designate 504/ADA Coordinator
• Provide annual notice to parents/students
• Provide continuing notice to students/employees
School Board
• Establish policy on nondiscrimination
• Adopt grievance procedure
• Adopt hearing procedure

*Parents and school personnel must be notified as to who is the 504/ADA coordinator.

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RESPONSIBILITY

There has been much confusion regarding the relationship between Section 504/ADA and special education laws and regulations. It must be emphasized that Section 504/ADA falls under the *management of general education*. The figure on the previous page illustrates some obligations of general education under Section 504/ADA and their relationship with school personnel roles. The school staff and parents should collaborate to help guarantee that students are provided with necessary accommodations, related aids and auxiliary services. A student who is found to have a disability under Section 504/ADA should be served by the resources provided through General education. The exception to this standard is a student who has been determined eligible as having a disability under the Individuals with Disabilities Education Act (IDEA). Such a student could receive special education services under IDEA and accommodations required under Section 504/ADA. Some IEPs will include both areas.

GENERAL PROCEDURES: AN OVERVIEW

— BEST PRACTICE —
Parent participation should always be encouraged throughout the Section 504/ADA process.

If the school has reason to suspect that because of a disability a student needs either accommodations or related services in the general educational environment in order to have equally effective participation in the school program, the school must notify the parent of an individual evaluation, evaluate the student, and develop and implement a plan for the delivery of necessary educational modifications. Requirements for the evaluation and placement process are determined by the type of disability suspected and the type of services needed by the student. The evaluation must be sufficient to assess the nature and extent of the educational impact of the disability so that appropriate educational services can be determined. A team knowledgeable about the student makes the decision about eligibility based on evaluation data. Identification of services needed must be made by a group of persons knowledgeable about the student. Decisions about Section 504/ADA eligibility and services must be documented in the student's Section 504/ADA file and reviewed at least yearly and whenever any member of the team feels it necessary. A student's program must be provided in the least restrictive environment.

Under Section 504/ADA, parents or guardians must be provided with notice of any action that changes the identification, educational program, or placement of their child. Written consent would be considered a best practice. The parents should be included in the evaluation and placement process whenever possible. Parents or guardians have the right to file a grievance, ask for a hearing, or call the regional Office for Civil Rights in Kansas City, MO, if they disagree with the school.

COMPARISON OF SPECIAL EDUCATION, SECTION 504 AND ADA

Guidelines for Educators

RELATIONSHIP

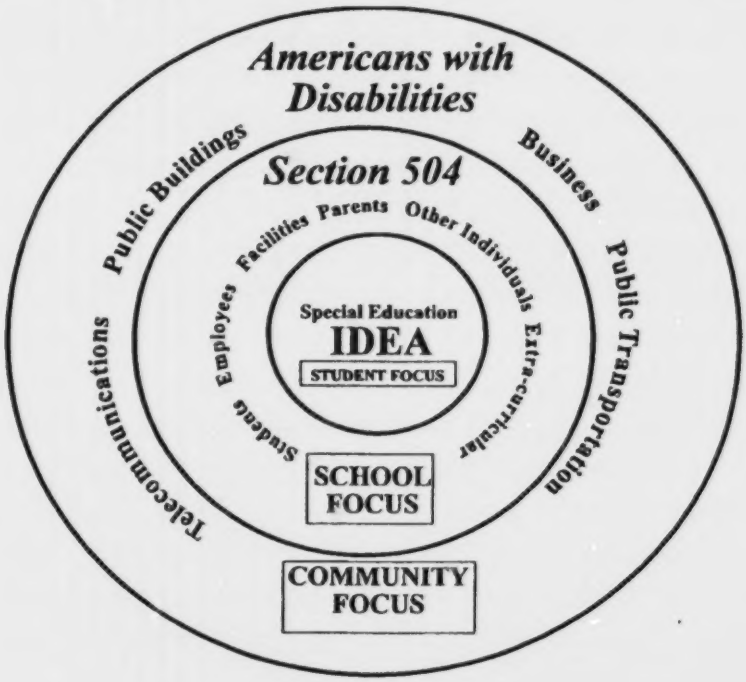
Section 504, while intended to be consistent with the Individuals with Disabilities Education Act (IDEA), is more encompassing. All individuals who receive special education and related services under IDEA are also qualified individuals under Section 504. However, not all individuals who qualify for Section 504 services qualify for special education under IDEA.

The figure below gives a visual representation of the relationship between Section 504, special education, general education, and the Americans with Disabilities Act

The relationship between Section 504, Individuals with Disabilities Education Act and the Americans with Disabilities Act.

Special education defines as eligible only students who have certain specific types of disabilities and who, because of those conditions, need special education and related services. The Section 504 definition of a disability is much broader, including any physical or mental disability that substantially limits one or more major life activity including, but not limited to, learning. Section 504 covers all students who meet this definition, even if they do not fall within a special education category and do not need special education.

Section 504 regulations concerning provision of a free appropriate public education closely parallel requirements of special education. Individuals who qualify for Section 504 educational services may require individualized accommodations and services. The eligibility for Section 504 services must be based upon evaluations conducted by a group of individuals knowledgeable about the student.



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ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
TYPE	A Civil Rights Law	An Education Act	A Civil Rights Law
TITLE AND CITATIONS	The Rehabilitation Act of 1973, as amended. 29 USC 794; 34 CFR PART 104	The Individuals With Disabilities Education Act (IDEA) 20 USC 1400 et seq; 34 CFR Part 300	Americans With Disabilities Act of 1990 (ADA), as amended. 42 USC 12134 28 CFR Part 35
PURPOSE	Is a civil rights law that protects the rights of individuals with disabilities in programs and activities that receive Federal financial assistance	Is a federal funding statute whose purpose is to provide financial aid to states in their efforts to ensure a free appropriate public education for students with disabilities.	A broader Civil Rights statute than 504 which provides a comprehensive national mandate for the elimination of discrimination against individuals with disabilities in private industry employing more than 15 individuals.
RESPONSIBILITY	General education	Special education and General education	Public and private schools, business establishments and public buildings. (services)
FUNDING	State and local responsibility (no federal funding)	State, local, and federal. IDEA funds cannot be used to serve students eligible only under Section 504	Public and private responsibility (no federal funding)
ADMINISTRATOR	Section 504 coordinator (Systems with 15 plus employees) to coordinate efforts to comply with this law.	Special education director.	ADA Coordinator is required to coordinate efforts to comply with this law.
SERVICE TOOL	Accommodations and/or services	Individualized Education Program (IEP). Some IEP's may include "Section 504" accommodations necessary for success in the general classroom.	Reasonable accommodations and legal employment practices

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
POPULATION	Identifies person as disabled so long as she/he meets the definition of a qualified person with disabilities; i.e., has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment or is regarded as disabled by others.	Identifies 13 qualifying conditions: autism, deafness, deaf-blindness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, serious emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment.	Identifies person as disabled so long as she/he meets the definition of a qualified person with disabilities; i.e., has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment or is regarded as disabled by others.
ELIGIBILITY	A person is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has a physical or mental impairment which substantially limits a major life activity, has a record of or is regarded by others as having a disability. The student is not required to need special education services in order to be protected.	A student is eligible to receive special education and related services only if a multidisciplinary team determines that the student has one or more of the thirteen qualifying disabilities and requires special education services.	A person is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment which substantially limits a major life activity, or is regarded by others as having a disability. The student is not required to need special education services in order to be protected.
FREE APPROPRIATE PUBLIC EDUCATION	Provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §104.34, 35, and 36.	Special education and related services that (1) Are provided at public expense, under public supervision and direction, and without charge to the parents; (2) meet the standards of the state board; (3) include an appropriate preschool, elementary, or secondary school education; and (4) are provided in conformity with an individualized education program.	Provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §104.34, 35, and 36.

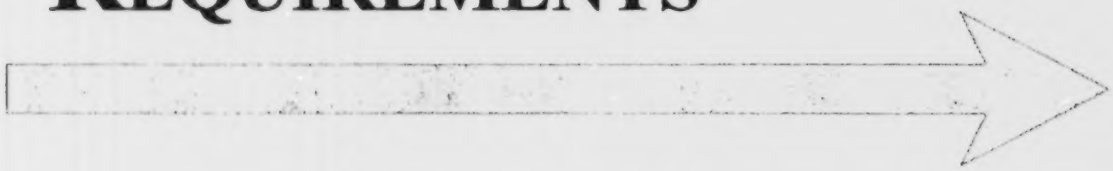
ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
ACCESSIBILITY	Federal regulations regarding building and program accessibility requires that reasonable accommodations be made.	Requires that modifications must be made if necessary to provide access to a free appropriate public education.	Requires that public programs be accessible to individuals with disabilities.
DRUG AND ALCOHOL USE	Current drug use is not considered a disability. An individual who has stopped using drugs and/or alcohol and is undergoing rehabilitation could be eligible for accommodations.	Drug and alcohol use is not covered under special education.	Current drug use is not considered a disability. Current alcohol abuse that prevents individuals from performing duties of the job or that constitutes a direct threat to property or safety of others is not considered a disability.
CONTAGIOUS DISEASES	May include any individual with a contagious disease such as aids.	Could be eligible under the category of "other health impaired."	Permits qualification standard requiring that an individual with a currently contagious disease or infection does not pose a direct threat to the health or safety of others.
PROCEDURAL SAFEGUARDS	Both require notice to the parent or guardian with respect to identification, evaluation, and placement.	Notice provisions are much more comprehensive. Minimum requirements of the notice are specified.	Makes provisions for public notice, hearings, and awarding attorney fees.
NOTICE AND CONSENT	Notice is required before a "significant change in placement." Written consent would be considered best practice	Written parental consent generally is required before taking action in regard to a student	Self-evaluations and transition plans are required and updated annually.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
EVALUATIONS	Evaluation draws on information from a variety of sources in the area of concern. Decisions are made by a group of people knowledgeable about the student, evaluation data, and placement options. Requires written parental notice. Written parental consent is considered best practice. Requires periodic reevaluations. Reevaluation is required before a significant change in placement. No provision is made for independent evaluations at district expense. The school district should consider other evaluations and information regarding the student.	A comprehensive evaluation is required to assess all areas of suspected disability. The student is evaluated by a multidisciplinary team. Parental consent is required before any evaluation can be conducted. Requires reevaluations to be conducted at least every 3 years. (Parental consent is required) A reevaluation is required before any significant change in placement because students covered by IDEA are also protected by Section 504. Provides for independent educational evaluation. A due process hearing is available if the school and parent disagree on the need for an independent evaluation.	All schools should conduct or update their Section 504 self-evaluation regarding services, accessibility, practices, and policies to assure discrimination is not occurring with any individual with disabilities.
SERVICES	When interpreting evaluation data and making service decisions, both laws require districts to: * Draw upon information from a variety of sources. * Assure that all information is documented and considered. * The service decision is made by a group of persons including those who are knowledgeable about the student, disability, the meaning of the evaluation data and placement options. * Ensure that the student is educated with his/her nondisabled peers to the maximum extent appropriate (Least Restrictive Environment – LRE). * Provide notice and conduct an evaluation before any material change of services.		

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
REVIEW OF PROGRAM	Accommodations should be reviewed periodically.	An IEP review meeting is required at least annually.	
GRIEVANCE PROCEDURES	Requires districts to provide a hearing procedure and a procedure review.	Provides for due process procedures and complaint procedures. Mediation also must be provided for.	Any school district shall adopt and publish grievance procedures for resolution of ADA complaints.
COMPLAINT PROCEDURES	An individual or organization may file a complaint with the Office for Civil Rights. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases OCR will consider complaints where more than 180 days have elapsed.	A complaint process through the SEA is required. Parents can file a complaint with the state, a decision must be provided within 60 days.	An individual or organization may file a complaint with the Office for Civil Rights. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases OCR will consider complaints where more than 180 days have elapsed.
DUE PROCESS	Both statutes require districts to provide impartial hearings for parents or guardians who disagree with the identification, evaluation, or placement of student with disabilities. School districts or parents can initiate due proces hearings. Requires that the parent have an opportunity to participate and be represented by counsel. Other details are left to the discretion of the local school district. Policy statements should clarify specific details. Delineates specific requirements.		Due process hearings can be initiated by either party. The court may allow a reasonable attorney's fee for the prevailing party.
MEDIATION	Not required, however mediation can be suggested.	Not required, however mediation must be provided for if agreed to by the parties.	Not required, however mediation can be suggested.
EXHAUSTION	Administrative hearing is not required prior to OCR involvement or court action.	Generally, the parent or guardian must exhaust all administrative hearings before seeking court action.	An administrative hearing is not required prior to OCR involvement or court action.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT	AMERICANS WITH DISABILITIES ACT
ENFORCEMENT	Enforced by the U.S. Office for Civil Rights. Regional offices are located throughout the United States. The office is part of the U.S. Department of Education. The regional office is located at 10220 N. Executive Hill Blvd., 8th Floor, Kansas City, MO 64153-1367. (816) 880-4200; TDD (816) 374-6461.	Enforced by the U.S. Office of Special Education Programs. Compliance is monitored by the State Board of Education and the Office of Special Education Programs. The Kansas State Department of Education will resolve complaints under Individuals with Disabilities Education Act.	Enforced by the U.S. Office for Civil Rights under an agreement with EEOC.
DISCIPLINE OF STUDENTS WITH DISABILITIES	Requires that a school district evaluate a student with a disability before making any significant change in his or her placement. The proposed exclusion of a student with disabilities that is permanent (expulsion), for an indefinite period, or for more than 10 consecutive school days, constitutes a "significant change in placement." Before implementing a suspension or expulsion that constitutes a significant change in the student's placement, the school must conduct a reevaluation to determine if the behavior was caused by the disability. If there is no relationship between the disability and the behavior, the school can expel the student. The school is not required to provide services and/or accommodations during the expulsion period.	Provides that a removal of more than 10 consecutive school days, or a series of removals which constitute a pattern of removals because they cumulate to more than 10 school days, constitute a change in placement. Also, placements in interim settings for weapon or drug possession or due to dangerous behavior are changes in placement. Before implementing a change in the student's placement, the school must conduct a manifestation determination meeting to determine if the behavior was caused by the disability. If there is no relationship between the disability and the behavior, the school can expel the student but still must provide the special education services outlined in the IEP. If there is a relationship, no disciplinary action can be taken. However, a change in services or placement can be proposed.	

PROCEDURAL REQUIREMENTS



Guidelines for Educators

PROCEDURAL REQUIREMENTS OF SECTION 504/ADA CONCERNING EDUCATIONAL SERVICES

TO BE IN COMPLIANCE WITH SECTION 504/ADA, SCHOOLS MUST MEET THE FOLLOWING SUBPART D REQUIREMENTS:*

1. Provide *written assurance of nondiscrimination* whenever the school receives federal money (e.g., on the LEA application). [34 CFR § 104.5(a)] ***(see Page 75)***
2. Designate an *employee to coordinate compliance* with Section 504/ADA (if there are more than 15 employees). [34 CFR § 104.7(a)] ***(see Page 77)***
3. Provide *notice* to students and parents. Notice may be included in student/parent handbook. [34 CFR § 104.8] ***(see Page 77)***
4. Identify and locate qualified children with disabilities. ***(see Page 39)***
5. Annually *notify* persons with disabilities and their parents or guardians of the school's responsibilities under Section 504/ADA. [34 CFR § 104.32(b)] ***(see Page 83)***
6. *Provide parents or guardians with the following procedural safeguards:* ***(see Page 42)***

    a. notice of their rights;
    b. an opportunity to review relevant records;
    c. an impartial hearing. It is important that parents or guardians be notified of their right to request a hearing regarding the identification, evaluation, or educational placement of their student(s) with disabilities. [34 CFR § 104.36]
    d. review procedures. Compliance with the procedural safeguards under special education is one way of meeting these requirements.

7. Conduct a *self-evaluation* of the school facilities, programs, and policies to ensure that discrimination is not taking place. (34 CFR § 104.6(c). This study should be conducted with the assistance of interested persons, including persons with disabilities. ***(see Page 76)*****

* **Adapted from Perry Zerkel**

** **You should have completed this in 1993 for then-existing facilities and programs. Continuous evaluation should be performed to assure compliance.**

THE NEXT FEW PAGES WILL OUTLINE THE PROCESS FOR COMPLYING WITH REQUIREMENTS UNDER SECTION 504/ADA

Kansas State Department of Education

PROCEDURE ONE: WRITTEN ASSURANCE OF NONDISCRIMINATION

Whenever a school applies for state or federal monies it must assure that it does not discriminate on the basis of race, sex, color, national origin, age, or disability. This requirement is done routinely by all schools.

PROCEDURE TWO: SECTION 504 COORDINATION

The general provisions of Section 504/ADA, together with other federal nondiscrimination laws, require the designation of a person to coordinate the school's efforts to comply with these laws. Coordination activities should include some or all of the following:

SUGGESTED RESPONSIBILITIES OF THE SECTION 504/ADA COORDINATOR:

- Establish and monitor a Section 504/ADA referral/identification/review process.
- Maintain data on Section 504/ADA referrals.
- Provide staff and parent awareness and training activities concerning Section 504/ADA requirements.
- Assure adoption and implementation of Section 504/ADA hearing and review procedures.
- Monitor Section 504/ADA budget.
- Consult with the Director of Special Education
- Serve as a school liaison with the state Section 504/ADA Coordinator.
- Serve as the school liaison with the Regional Office for Civil Rights.

The Section 504/ADA coordinator could be someone already employed by the school. The Coordinator could be as general education administrator or school counselor who is knowledgeable about these federal laws and regulations.

PROCEDURE THREE: HEARING AND REVIEW PROCEDURES

If any person believes that the school or any of the school's staff have violated Section 504 of the Rehabilitation Act of 1973 or its implementing regulations, he/she may file a complaint. It should be understood that a complaint can be filed with the Office for Civil Rights without going through the school.

The school's 504 coordinator must assure that the school adopts appropriate procedures for filing, investigating, and resolving complaints.

Guidelines for Educators

OFFICE FOR CIVIL RIGHTS COMPLAINT PROCESS

An individual or an organization may file a complaint with the regional Office for Civil Rights (OCR) in Kansas City, Missouri. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases OCR will consider complaints where more than 180 days have elapsed.

Anyone wishing to file a formal complaint with OCR should submit the following information in a letter or on the Discrimination Complaint Form available from OCR regional offices.

- Your name and address (a telephone number where you may be reached during business hours is helpful, but not required);
- A general description of the person(s) or class of persons injured by the alleged discriminatory act(s) (names of the injured person(s) are not required);
- The name and location of the school that allegedly committed the discriminatory act(s); and
- A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, how, why and when it occurred, and the basis for the alleged discrimination (race, sex, color, national origin, age or disability).

A recipient may not retaliate against any person who has made a complaint, testified, assisted, or participated in any manner in an investigation or proceeding arising from the filing of a complaint.

Kansas State Department of Education

SECTION 504
DUE PROCESS HEARING PROCEDURE

An impartial due process hearing is a means of resolving differences involving the education of Section 504 qualified students when such differences cannot be resolved through less formal procedures.

DUE PROCESS is defined as an opportunity to present evidence and reasons for the objections to the decisions and/or procedures used by the school which are believed to violate Section 504. A Section 504 due process hearing may be called:

> *At the request of the school, or a parent, a guardian, or a surrogate parent of the student.*

The proceedings are presided over, and a decision rendered, by an impartial hearing officer. An impartial hearing officer is a person who is not affiliated with the school or the parent and, thus, can render an unbiased decision.

A copy of the hearing officer's decision shall be delivered to the school and the parent or guardian following completion of the hearing.

A written, or electronic verbatim recording of the due process hearing should be on file at the school office and should be available for review upon request by the parent.

It is important that PARENTS OR GUARDIANS be notified of their right to request a hearing regarding the identification, evaluation, or educational placement of their student.

> Section 104.36 of the federal regulations implementing Section 504 states:
> A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of Sec. 1415 of the Individuals with Disabilities Educa-

Guidelines for Educators

PROCEDURE FOUR: NOTICE TO STUDENTS, PARENTS, AND EMPLOYEES

SECTION 504 OF THE REHABILITATION ACT AND AMERICANS WITH DISABILITIES ACT

NOTICE OF NON-DISCRIMINATION

Applicants for admission and employment, students, parents, persons with disabilities, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the _____ are hereby notified that this school does not discriminate on the basis of race, sex, color, national origin, age, or disability in admission or access to, or treatment or employment in, its programs and activities. Any person having inquiries concerning the school's compliance with the regulations implementing Title VI, Title IX, The Americans with Disabilities Act (ADA) or Section 504 is directed to contact:

_____

_____

_____

who has been designated by the school to coordinate efforts to comply with the regulations regarding nondiscrimination, or the Assistant Secretary for Civil Rights, U.S. Department of Education.

***RECOMMENDATIONS FOR NOTICE PLACEMENT**

- Staff, parent and student handbooks
- Included on job announcements
- Staff workrooms
- School calendars
- Bulletin boards
- Annual mailing to staff

PROCEDURE FIVE: LOCATE AND IDENTIFY

The school shall maintain a continual program to find unserved children who might qualify for special education or Section 504/ADA services. To encourage the use of services and ongoing assistance at the earliest age possible, the following methods could be used to identify unserved children:

- a series of spot announcements on all local news media.
- a series of posters to be placed in post offices, city hall, schools, and other public buildings.
- distribution of a referral form to such public and private agents as hospital administrators, public health officers, social welfare offices, private medical practitioners, public nursery schools, and/or child-care and Head Start directors. Referrals should be made to the special education director, or Section 504/ADA coordinator, for appropriate action.

Guidelines for Educators

PROCEDURE SIX: ANNUAL NOTICE OF NON-DISCRIMINATION UNDER SECTION 504/ADA

NOTICE

PROGRAMS FOR STUDENTS WITH DISABILITIES UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT OF 1990

Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act prohibit discrimination against persons with a disability in any program receiving federal financial assistance. Section 504/ADA defines a person with a disability as anyone who:

> Has a mental or physical impairment which substantially limits one or more of the person's major life activities; has a record of a physical or mental impairment that substantially limits one or more major life activities; or is regarded as having a physical or mental impairment that substantially limits one or more major life activities.

The school has the responsibility to provide adjustments, modifications and provide necessary services to eligible individuals with disabilities.

The _____ acknowledges its responsibility under Section 504/ADA to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person with a disability shall knowingly be permitted in any program or practice in the school.

***RECOMMENDATIONS FOR NOTICE PLACEMENT**

- Staff, parent and student handbook
- Staff workrooms
- Bulletin boards
- School calendar
- Annual publication in newspaper

Kansas State Department of Education

PROCEDURE SEVEN: PARENTS AND STUDENT RIGHTS UNDER SECTION 504/ADA

School: _____ Date: _____

The following is a listing of student and parent rights granted by these federal non-discrimination laws.

AS A PARENT YOU HAVE THE RIGHT TO:

1. Have your child take part in and receive benefits from public education programs without discrimination based on a disability.
2. Have the school advise you of your rights under federal law.
3. Receive notice with respect to identification, evaluation, educational services, or placement of your child.
4. Have your child receive a free appropriate public education. This includes the right to be educated with other students to the maximum extent appropriate. It also includes the right to have the school make reasonable accommodations to allow your child an equal opportunity to participate in school and school-related activities.
5. Have your child educated in facilities and receive services comparable to those provided students without disabilities.
6. Have your child receive regular or special education and related services if she/he is found to be eligible under Section 504 of the Rehabilitation Act of 1973.
7. Have evaluation, educational, and placement decisions made based upon a variety of information sources, and by individuals who know the student, disability, evaluation data, and placement options.
8. Have your child receive an equal opportunity to participate in non-academic and extracurricular activities offered by the school.
9. Examine all records relating to decisions regarding your child's identification, evaluation, educational program, and placement and receive copies at reasonable cost to you unless the fee would deny you access.
10. File a complaint with your school if you feel your child is being discriminated against because of his/her disability.
11. Request a due process hearing to resolve issues with the school.
12. File a complaint with the regional office for civil rights. The office is part of the U.S. Department of Education. The regional office is located at 10220 N. Executive Hills Blvd., 8th Floor, Kansas City, Missouri 64153, (816) 880-4200, (816) 891-0582 TDD, (816) 891-0644 FAX.

Guidelines for Educators

PROCEDURE EIGHT: SELF-EVALUATION

A self-evaluation to determine possible discrimination involving school facilities, programs, activities, and policies is a requirement of both Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. Any school that employs fifteen or more employees shall conduct such an evaluation and develop a transition plan that outlines how the school will eliminate any form of discrimination. The self-study should be on file and available for public inspection.

THE FOLLOWING ARE KEY CONSIDERATIONS WHEN CONDUCTING THE SELF-EVALUATION:

- Evaluate facilities, programs and policies;
- Involve other individuals, including persons with disabilities;
- Develop a Section 504/ADA transition plan that outlines any modifications that will be necessary. This plan identifies facilities, programs and policies that could be discriminatory, and how the school intends to solve the problems.
- Modify any policies, facilities, or practices that do not meet the requirements of Section 504 or ADA, after consultation with others, including persons with disabilities;
- Take appropriate remedial steps to eliminate the effects of any discrimination resulting from policies and practices;
- Keep a copy of the self-evaluation on file for public inspection; and
- Conduct periodic re-evaluations as needed.

Kansas State Department of Education

SAMPLE FORM
SELF-EVALUATION FOR SECTION 504/ADA

Besides the physical evaluation of the school district, the self evaluation should examine the following:

A. PROCEDURAL REQUIREMENTS

1. Prior to the beginning of each school year does your school district advise students, parents, employees, and the general public that all educational opportunities will be offered without regard to disability? _____ Yes _____ No
   a) Is this notice available to persons who are visually or hearing impaired? _____ Yes _____ No

2. Does your school district comply with the following notice requirement?
   a) Notice must be given to applicants for:
   - admission and employment, elementary and secondary school students and their parents; _____ Yes _____ No
   - employees, sources of referrals for applicants: _____ Yes _____ No
   - union and professional organizations holding collective bargaining or professional agreements with the recipient. The notice must contain a statement of the recipient's policy of nondiscrimination provisions of Section 504/ADA, and the name of the Section 504/ADA Coordinator. _____ Yes _____ No

   The notice of the policy of nondiscrimination must appear in bulletins, catalogs, application forms and other materials for both students and employees. _____ Yes _____ No

3. Coordinator
   a) Has your school district designated an employee(s) to coordinate the recipient's compliance activities and to investigate complaints alleging noncompliance with the provisions of Section 504/ADA? _____ Yes _____ No

4. Grievance Procedure
   a) Has your school district adopted a grievance procedure for the prompt and equitable resolution of complaints of discrimination by students and employees? _____ Yes _____ No
   b) Has your school district adopted a due process hearing procedure for the resolution of complaints? _____ Yes _____ No

5. Self-Evaluation
   a) Has your school district conducted a self-evaluation of your policies and practices in consultation with persons with disabilities or organizations representing persons with disabilities to determine whether they discriminate on the basis of disability? _____ Yes _____ No
   b) This should have been completed in 1993 for then-existing facilities and programs. However, continued evaluation should be performed to assure compliance.

Guidelines for Educators

B. COUNSELING

1. Are counseling materials and activities free from discrimination on the basis of disability? _____ Yes _____ No
2. Are student program selections, career and employment selections, and promotion and recruitment efforts free from discrimination on the basis of disability? _____ Yes _____ No
3. Are counseling practices free from inducing students to enroll in programs based on their disability? _____ Yes _____ No
4. Are different testing or other materials for appraising or counseling students used on the basis of a student's disability? _____ Yes _____ No
5. Are counselors communicating effectively with students who are hearing impaired? _____ Yes _____ No
6. Are promotional materials available to the visually impaired? _____ Yes _____ No

C. EQUAL OPPORTUNITY

1. Are students with disabilities placed in general education environments to the maximum extent appropriate to the needs of the student? _____ Yes _____ No
2. Are proper evaluation and due process procedures followed before a student with a disability is provided special education or related services? _____ Yes _____ No
3. Have all students been given an equal opportunity to participate in nonacademic and extra-curricular activities offered by the school? _____ Yes _____ No

D. RECORDS

1. Are records of decisions regarding a student's identification, evaluation, educational program and placement available to parents or guardians for examination? _____ Yes _____ No
2. Are copies of educational records available at a reasonable cost to parents or guardians? _____ Yes _____ No
3. Are responses from the school regarding requests for explanations and interpretations of the student's records made promptly to parents or guardians? _____ Yes _____ No

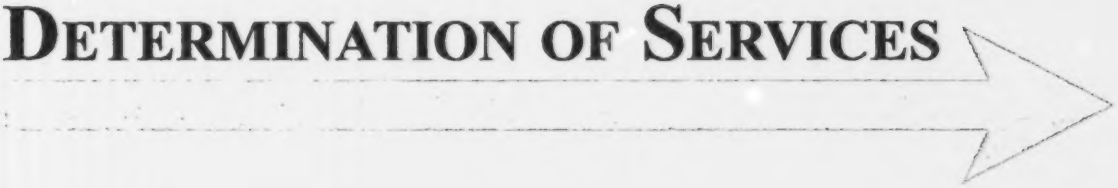
E. EMPLOYMENT

1. Are all of your school's employment practices free from discrimination against employees or applicants for employment on the basis of disability? _____ Yes _____ No
2. Are all recruitment sources notified of the school's policy of non-discrimination in employment on the basis of disability? _____ Yes _____ No
3. Are all persons treated equally with respect to:
   a) processing applications for employment; _____ Yes _____ No
   b) hiring, upgrading, promotion tenure, demotion, transfer, lay-off, termination, right of returning from lay-off and rehiring; _____ Yes _____ No
   c) rates of pay or any other form of compensation; _____ Yes _____ No
   d) job assignments, job classifications, organizational structures, position description, lines of progression, and seniority lists; _____ Yes _____ No

e) leave of absence, sick leave, or any other leave; _____ Yes _____ No
f) Fringe benefits; _____ Yes _____ No
g) selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leave of absence to pursue training; _____ Yes _____ No
h) employer-sponsored activities. _____ Yes _____ No

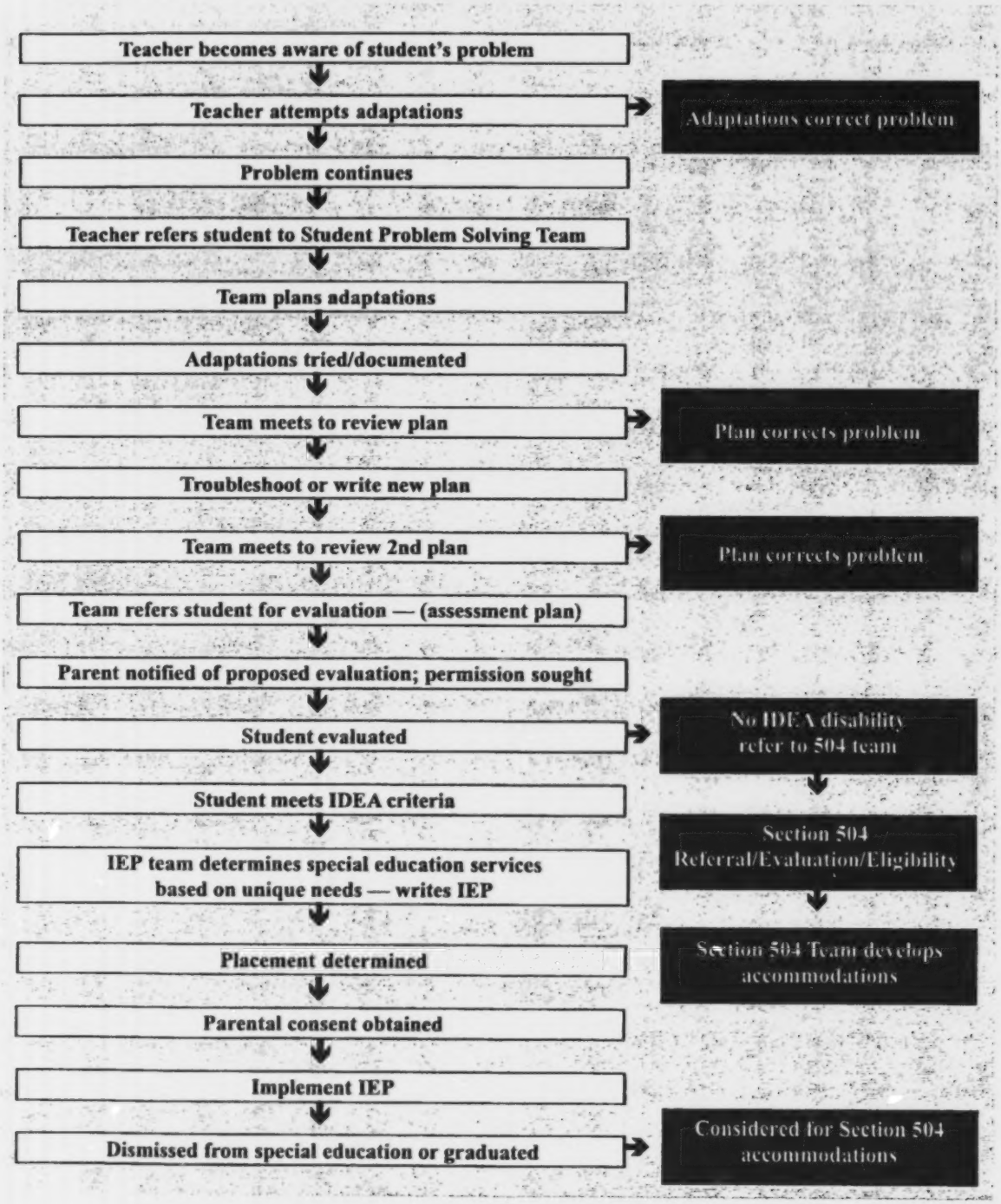
4. Do employment tests or other selection criteria disproportionately exclude a particular class of persons on the basis of disability? _____ Yes _____ No

Process for the Determination of Services



Guidelines for Educators

PROCESS FOR THE DETERMINATION OF SERVICES


Teacher becomes aware of student's problem
Teacher attempts adaptations
Adaptations correct problem
Problem continues
Teacher refers student to Student Problem Solving Team
Team plans adaptations
Adaptations tried/documented
Team meets to review plan
Plan corrects problem
Troubleshoot or write new plan
Team meets to review 2nd plan
Plan corrects problem
Team refers student for evaluation — (assessment plan)
Parent notified of proposed evaluation; permission sought
Student evaluated
No IDEA disability refer to 504 team
Student meets IDEA criteria
Section 504 Referral/Evaluation/Eligibility
IEP team determines special education services based on unique needs — writes IEP
Placement determined
Section 504 Team develops accommodations
Parental consent obtained
Implement IEP
Dismissed from special education or graduated
Considered for Section 504 accommodations

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WHEN SCHOOL STAFF SHOULD CONSIDER EXISTENCE OF A DISABILITY AND POSSIBLE NEED FOR SECTION 504 SERVICES:

- When a **Parent** frequently expresses a concern about the student's performance.
- When **Suspension or Expulsion** is being considered for any student.
- When **Retention** is being considered.
- When a student shows a pattern of **not benefitting from teacher instruction.**
- When a student has a **serious illness or injury.**
- When a student is **referred to Student Problem Solving Team,** but it is determined not to do an evaluation under the IDEA.
- When a student is evaluated and **does not qualify for special education** services under the **IDEA.**
- When a student is released from IDEA Services.
- When a student **exhibits a chronic health condition.**
- When a student has been identified as having **attention deficit disorder (ADD)** or **deficit hyperactivity disorder (ADHD)** and educational performance is affected.
- When a student is identified as **"at risk"** or exhibits the potential for dropping out of school.
- When **substance abuse** is an issue. The individual must have stopped using the substance and should either be in rehabilitation or have gone through the rehabilitation process.
- When a **disability** of any kind is known or suspected.

Guidelines for Educators

ELIGIBILITY

A PERSON MAY BE CONSIDERED DISABLED UNDER THE DEFINITION OF SECTION 504/ADA IF THE INDIVIDUAL:

1. has a mental or physical impairment which substantially limits one or more of such person's major life activities.

   "Major life activities" include functions such as:

   - caring for one's self
   - walking
   - seeing
   - speaking
   - learning
   - performing manual tasks
   - hearing
   - breathing
   - working

When a condition does not substantially limit a major life activity, the individual does not qualify for services under Section 504/ADA.

2. has a record of such an impairment; or

3. is regarded as having such an impairment.

The second and third prongs of the definition apply only if discrimination occurs because of a person's "record" or "history" of impairment, or because the person is regarded as having an impairment. (See Appendix E, OCR policy letter August 3, 1992).

Kansas State Department of Education

PROCESS FOR DETERMINING SERVICES

The Section 504/ADA coordinator should ensure that the following process occurs:

INITIAL INTERVENTION

1. If a student experiences educational difficulties, a team meets to discuss the concerns.
2. The team suggests intervention strategies to help correct the difficulties. The primary function of the team is to offer assistance to teachers.
3. If the strategies are unsuccessful, the team can make a referral for evaluation.

REFERRAL

4. Referrals are accepted from parents, professional staff, students, and/or community agencies.
5. The presenting problem(s) and previous remedies are considered and reviewed. The review should include all current information and recommendations.

NOTIFICATION

6. The school notifies the parents or guardians, in writing, of the school's reason and intent to conduct an evaluation. The notice should include a description of the evaluation and of procedural safeguards.

WRITTEN CONSENT

7. Even though Section 504/ADA does not require written parental consent before the initial evaluation, written parental consent is considered best practice. (IDEA requires written consent prior to conducting an evaluation)

EVALUATION

8. The school evaluates a student suspected of having a disability before initiating any special services or making any subsequent, significant change in services.

ELIGIBILITY

9. Based upon evaluation results, the determination is made whether the child is a child with mental or physical impairment which substantially limits a major life activity and is in need of special accommodations/services.

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WRITTEN CONSENT

10. Even though Section 504/ADA does not require written parental consent before the provision of initial service, written parental consent is considered best practice. (IDEA requires written consent.)

SERVICES

11. These factors were considered by a group of individuals knowledgeable about the student, disability, evaluation, and service options:
    a. evaluation results;
    b. Section 504/ADA eligibility;
    c. the student's unmet needs;
    d. services and/or accommodations based on eligibility; and
    e. discuss and plan possible staff inservice.

IMPLEMENTATION

12. The school staff prepares a written plan specifying the necessary accommodations/ services to allow for the student's disability. Parents should be consulted and given opportunity for input regarding the accommodations/services and should agree, in writing, to the proposed plan.

13. The accommodations and/or services are implemented.

REVIEW

14. Each student's accommodations and/or services are reviewed periodically.

— BEST PRACTICE —

The team should review the accommodations at least annually.

Written parental consent should always be considered a best practice.

ACCOMODATIONS/ SERVICES

Accommodations can cover a wide range of environments and issues.

ACCOMMODATIONS/SERVICES

ENVIRONMENTAL STRATEGIES

- Provide a structured learning environment.
- Adjust class schedules.
- Provide classroom aides and note takers.
- Adapt nonacademic times such as lunch room and recess.
- Adapt physical education.
- Change student seating.
- Provide use of a study carrel.
- Alter location of personal or classroom supplies for easier access or to minimize distraction.

ORGANIZATIONAL STRATEGIES

- Adapt test delivery.
- Use tape recorders, computer-aided instruction, and other audiovisual equipment.
- Select modified textbooks or workbooks.

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- Adapt test delivery.
- Use tape recorders, computer-aided instruction, and other audiovisual equipment.
- Select modified textbooks or workbooks.
- Tailor homework assignments.
- Use of one-to-one tutorials.
- Provide peer tutoring.
- Set time expectations for assignments.
- Provide cues such as clock faces indicating beginning and ending times.
- Provide tests in segments so that student finishes one segment before receiving the next part.
- Highlight main ideas and supporting details in the book.

BEHAVIOR STRATEGIES

- Use behavioral management techniques.
- Implement behavioral/academic contracts.
- Utilize positive reinforcements (rewards).
- Tailor homework assignments.
- Use of one-to-one tutorials.
- Provide peer tutoring.

BEHAVIOR STRATEGIES (continued)

- Set time expectations for assignments.
- Provide cues such as clock faces indicating beginning and ending times.
- Provide tests in segments so that student finishes one segment before receiving the next part.
- Highlight main ideas and supporting details in the book.
- Utilize negative reinforcements (consequences).
- Confer with the student's parents (and student as appropriate).
- Confer with the student's other teachers.
- Establish a home/school communication system for behavior monitoring.
- Post rules and consequences for classroom behavior.
- Write a contract for student behavior.
- Offer social reinforcers (i.e., praise) for appropriate behavior.
- Establish daily/weekly progress report for the student.
- Implement self-recording of behaviors.

PRESENTATION STRATEGIES

- Tape lessons so the student can listen to them again.
- Provide photocopied material for extra practice (i.e., outlines, study guides).
- Require fewer drill and practice activities.
- Give both oral and visual instructions for assignments.
- Vary the method of lesson presentation:
  a. lecture
  b. small groups
  c. large groups
  d. use audio visuals (i.e., filmstrips, study prints)
  e. peer tutors or cross-age tutors (i.e., take notes, monitor assignments, read aloud, listen)
  f. demonstrations
  g. experiments
  h. simulations
  i. games
  j. 1-to-1 instruction with other adult
- Provide for oral testing.
- Ask student to repeat directions/assignments to insure understanding.
- Arrange for a mentor to work with student in his or her interest area or area of greatest strength.

METHODOLOGY STRATEGIES

- Repeat and simplify instructions about in-class and homework assignments.
- Supplement oral instructions with visual instructions.
- Change instructional pace.
- Adapt instructional methods.

Guidelines for Educators

CURRICULUM STRATEGIES

- Adapt instructional materials.
- Utilize supplementary materials.
- Assess whether student has the necessary prerequisite skills. Determine whether materials are appropriate to the student's current interest and functioning levels.
- Implement study skill strategies (survey, read, recite, review). Introduce definition of new terms/ vocabulary and review to check for understanding.
- Limit amount of material presented on a single page.
- Provide a sample or practice test.
- Be aware of student's preferred learning style and provide appropriate instruction/materials.

EFFECTIVE ACCOMMODATIONS/SERVICES

1. Provide study carrels.
2. Use room dividers.
3. Provide headsets to muffle noise.
4. Seat student away from doors/windows.
5. Seat near model (student or teacher).
6. Provide time-out area.
7. Rearrange student groups (according to instructional needs, role models, etc.).
8. Group for cooperative learning.
9. Vary working surface (e.g., floor or vertical surface such as blackboards).
10. Simplify/shorten directions.
11. Give both oral and written directions.
12. Have student repeat directions.
13. Have student repeat lesson objective.
14. Ask frequent questions.
15. Change question level.
16. Adapt response format (e.g., from verbal to physical; from saying to pointing).
17. Provide sequential directions (label as first, second, etc.).
18. Use manipulatives.
19. Alter objective criterion level.
20 Provide functional tasks (relate to child's environment).
21. Reduce number of items on a task.
22. Highlight relevant words/features.
23. Use rebus (picture) directions.
24. Provide guided practice.
25. Provide more practice trials.
26. Increase allocated time.
27. Use a strategy approach.
28. Adapt reinforcers.
29. Increase reinforcement frequency.
30. Delay reinforcement.
31. Use specific rather than general praise.
32. Have a peer tutor program.

EFFECTIVE ACCOMMODATIONS/SERVICES (continued)

33. Provide frequent review.
34. Have student summarize at end of lesson.
35. Use self-correcting materials.
36. Adapt test items for differing response modes.
37. Provide mnemonic devices.
38. Provide tangible reinforcers.
39. Use behavioral contracts.
40. Establish routines for handing work in, heading papers, etc.
41. Use timers to show allocated time.
42. Teach self-monitoring.
43. Provide visual cues (e.g., posters, desktop number lines, etc.).
44. Block out extraneous stimuli on written material.
45. Tape record directions.
46. Tape record student responses.
47. Use a study guide.
48. Provide critical vocabulary list for content material.
49. Provide essential fact list.
50. Use clock faces to show classroom routine times.
51. Use dotted lines to line up math problems or show margins.
52. Provide transition directions.
53. Assign only one task at a time.
54. Provide discussion questions before reading.
55. Use word markers to guide reading.
56. Alter sequence of presentation.
57. Enlarge or highlight key words on test items.
58. Provide daily and weekly assignment sheets.
59. Post daily/weekly schedule.
60. Use graph paper for place value or when adding/subtracting two digit numbers.
61. Provide anticipation cues.
62. Establish rules and review frequently.
63. Teach key direction words.
64. Use distributed practice
65. Provide pencil grips.
66. Tape paper to desk.
67. Shorten project assignment into daily tasks.
68. Segment directions.
69. Number (order) assignments to be completed.
70. Change far-point to near-point material for copying or review.
71. Put desk close to blackboard.
72. Incorporate currently popular themes/characters into assignments for motivation.
73. Repeat major points.
74. Use physical cues while speaking (e.g., 1, 2, 3, etc.).

Guidelines for Educators

EFFECTIVE ACCOMMODATIONS/SERVICES (continued)

75. Pause during speaking.
76. Use verbal cues (e.g., "Don't write this down", "This is important").
77. Change tone of voice, whisper, etc.
78. Use an honor system.
79. Collect notebooks weekly (periodically) to review student notes.
80. Reorganize tests to go from easy to hard.
81. Color code place value tasks.
82. Use self-teaching materials.
83. Do only odd/or oven numbered items on a large task sheet.
84. Use a primary typewriter or large print to create written material.
85. Provide organizers (e.g., cartons/bins) for desk material.
86. Teach varied reading rates (e.g., scanning, skimming, etc.).
87. Provide content/lecture summaries.
88. Use peer-mediated strategies (e.g., "buddy system").
89. Call student's name before asking a question.
90. Use extra spaces between lines of print.
91. Color code materials/directions.
92. Use raised-line paper.
93. Provide calculators.
94. Circle math computation sign.
95. Use hand signals to cue behavior (e.g., attention, responding).
96. Establish a rationale for learning.
97. Use advance organizers.
98. Help students to develop their own learning strategies.

EXAMPLES

Guidelines for Educators

The accommodations/services a student receives will be based upon the unique needs identified during the evaluation process. Many accommodations listed could be the parents' or student's responsibility.

Some disabilities listed in this section are special education categories. These disabilities could also be covered by Section 504/ADA.

ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)
EXAMPLE: The student frequently misses school and does not have the strength to attend a full day. This student has a disability which substantially limits the life activities of learning and caring for one's self.

POSSIBLE ACCOMMODATIONS:

- Apply universal precautions.
- Administer medications.
- Adjust attendance policies.
- Adjusted schedule or shortened day.
- Provide rest periods.
- Adapt physical education curriculum.
- Establish routine communication with health professionals, school nurse, and home.
- Develop health care and emergency plan.
- Meet with doctor, parents, teachers, and administrators.
- Provide two way audio/video link between home and classroom.
- Arrange for an adult tutor at school or home.
- Adapt assignments, and tests.
- Provide an extra set of textbooks for home.
- Provide staff training on confidentiality.
- Provide education and support for peers regarding issues of health and dying.
- Provide transportation to and from school
- Tape books or provide a personal reader.
- Provide a home computer with e-mail.
- Arrange for support group.
- Provide employment transitions for secondary students.
- Develop supportive community attitudes regarding schools' need to provide education to HIV positive/AIDS students.
- Develop and promote nondiscriminatory classroom climate and supportive student attitudes.
- Promote the most supportive, least restrictive educational program for AIDS students.
- Provide inservice on Section 504 and ADA.
- Initiate a "Kids on the Block" AIDS program.
- Video-tape classroom teacher.
- Provide a peer support group to encourage communication.
- Furnish home and hospital care for extended periods of illness.

ALLERGIES
EXAMPLE: The student has severe allergic reactions to certain pollens and foods. The condition is substantially limiting to the major life activity of breathing.

POSSIBLE ACCOMMODATIONS:

- Avoid allergy causing substance: soap, weeks, pollen, food.
- Inservice necessary persons: dietary people, peers, coaches, laundry for sports people (soap).
- Avoid using chalk boards.
- Avoid using perfume and hairspray.
- Provide clean rooms and avoid rooms with carpet.
- Allow time for shots/clinic appointments.
- Use air purifiers.
- Adapt physical education curriculum during high pollen time.
- Improve room ventilation. (When remodeling has occurred and materials may cause an allergy.)

ARTHRITIS
EXAMPLE: A student with arthritis may have persistent pain, tenderness or swelling in one or more joints. A student experiencing arthritic pain may require a modified physical education program. The condition is substantially limiting to the major life activity of performing manual tasks.

POSSIBLE ACCOMMODATIONS:

- Provide a rest period during the day.
- Accommodate for absences for doctor's appointments.
- Provide assistive devices for writing e.g. pencil grips, non-skid surface, typewriter/computer, etc.
- Adapt physical education curriculum.
- Administer medication.
- Arrange for assistance with carrying books, lunch tray, etc.
- Provide book caddy.
- Implement movement plan to avoid stiffness.
- Provide seating accommodations.
- Allow extra time between classes.
- Provide locker assistance.
- Provide modified eating utensils.
- Develop health care plan and emergency plan.
- Make available access to wheelchair/ramps and school van for transportation.
- Provide time for massage or exercises that may be needed.
- Adapt recess time.
- Provide peer support groups.

Guidelines for Educators

- Arrange for instructional aide support.
- Arrange for someone else to take notes.
- Install handle style door knobs (openers).
- Record lectures/presentations.
- Have teacher provide outlines of presentation.
- Issue velcro fasteners for bags, shoes, coats.
- Obtain padded chairs.
- Provide a more comfortable style of desk.
- Adapt attendance policy, if needed.
- Provide a shorter school day.
- Furnish a warmer room and sit student close to the heat.
- Adapt curriculum for the lab classes.
- Supply an extra set off books for home use and keep a set at school.
- Let student give reports orally rather than written.
- Assign someone to monitor plan.
- Begin an awareness program for other students.
- Monitor any special dietary considerations.
- Adapt the school curriculum, as necessary, i.e. in band assist in selecting instrument student can play.
- Provide individual school counseling.
- Make any needed bathroom accommodations.
- Accommodate for writing with a computer and notetaking with a tape recorder.

ASTHMA
EXAMPLE: A student has been diagnosed as having asthma. The doctor has advised the student not to participate in physical activity outdoors. The disability limits the major life activity of breathing. The school is required to make reasonable accommodations in the education program.

POSSIBLE ACCOMMODATIONS:

- Adapt activity level for recess, physical education, etc.
- Use air purifier or inhalants.
- Provide inhalant therapy assistance.
- Administer medication.
- Provide homebound instruction.
- Remove allergens – e.g., hairspray, lotions, perfumes, pine trees, carpet.
- Make field trips non-mandatory and supplement with videos, audios, movies, etc.
- Accommodate medical absence; arrange transportation to home/clinic.
- Provide education to peers/teachers/others (bus drivers, cooks, etc.).
- Adjust for personal administration of medications.
- Provide access to water, gum, etc.
- Provide curriculum considerations (science class, physical education, etc.)

- Develop health care and emergency plan.
- Provide compensation if individual misses an excessive amount of school.
- Have peers available to carry materials to and from classes (e.g. lunch tray, books).
- Provide rest periods.
- Make school health care needs known to appropriate staff.
- Adapt field trip experiences.
- Provide indoor space for before and after school.
- Arrange for access to wheelchair for transition purposes.
- Highest concentration live along highways and interstate systems.
- Have a locker location which is centralized and free of atmosphere changes.
- Adapt school day duration or 180 day requirement, if needed.
- Reimburse parent for transportation costs or provide alternate transportation to and from school.
- Place student in most easily controlled environment.
- Modify attendance policies.
- Modify certain learning activities.

ATTENTION DEFICIT DISORDER (ADD) AND ATTENTION DEFICIT HYPERACTIVITY DISORDER (ADHD)

EXAMPLE: *The student does not meet eligibility requirements under IDEA as emotionally disturbed, learning disabled or other health impaired. The student is regarded as having ADD by a doctor, and the disability limits the major life activity of learning.*

POSSIBLE ACCOMMODATIONS:

- Adjust student seating.
- Use simple, concise instructions.
- Provide a peer tutor/helper.
- Teach compensatory strategies.
- Administer medication.
- Staff monitor stress and fatigue; adjust activities.
- Adapt assignments.
- Adapt instructional pace.
- Provide supervision during transitions, disruptions, field trips.
- Use study guides, organizing tools.
- Modify testing procedures.
- Provide counseling.
- Initiate frequent parent communication.
- Establish a school/home behavior management program.
- Provide training for staff and parents.
- Have the student use an organizer–train in organizational skills.
- Establish a cue between teacher and student.
- Assign chores/duties around room/school.

Guidelines for Educators

- Adapt environment to avoid distractions.
- Have child work alone or in a study carrel.
- Highlight required or important information/directions.
- Place assignments, directions on tape for auditory learner.
- Provide a checklist for student, parents, and/or teacher to record assignments or completed tasks.
- Use a timer to assist student to focus on given task or number of problems in time allotted – *stress* they need to be done *correctly.*
- Have student re-state or write directions/instructions.
- Allow student to respond in variety of different modes, i.e. may place answers for tests on tape instead of paper.
- Give student opportunity to stand while working.
- Provide additional supervision to and from school.
- Adapt student's work area with barriers.
- Inservice other students and staff, with parent permission.
- Develop a behavior modification plan.
- Prescribe physical activity, exercise, etc.
- Determine trigger points and prevent action leading to trigger points.
- Provide a sociometric/sociogram design, such as circle of friends.

CANCER
EXAMPLE: A student with a long term medical problem may be given considerations to accommodate special needs. For example, a student with cancer may need a class schedule that allows for rest and recuperation following chemotherapy. The condition is substantially limiting to the major life activity of caring for one's self.

POSSIBLE ACCOMMODATIONS:

- Apply universal precautions.
- Adapt attendance policies.
- Limit number of classes taken; accommodate scheduling (breaks, etc.).
- Send teacher/tutor to hospital, as appropriate.
- Take whatever steps are necessary to accommodate student's involvement in extra-curricular activities.
- Adapt activity level and expectations in classes based on physical limitations; don't require activities that are too physically taxing.
- Schedule daily monitoring or distribution of medications.
- Provide appropriate assistance technology.
- Have accommodations available for transportation to and from school and extra curricular activities.
- Provide dietary accommodations.
- Shorten day, arrange for home tutoring following treatment.
- Provide additional set of texts and assignments to hospital school.
- Tape lessons.

- Adapt schedule to include rest breaks.
- Educate peers.
- Provide counseling; establish peer support group
- Adapt physical education.
- Provide access as needed to school health services.
- Provide awareness training to staff and students.
- Develop health care emergency plan to deal with getting sick at school.
- Provide counseling for other students to deal with cancer student.
- Offer counseling for deal and dying.
- Furnish a peer tutor.
- Adapt work load.
- Supply student with a student manager for participation in sports.
- Give student a separate bathroom.
- Provide an interactive computer/modem.
- Set up crisis teams.
- Instigate a free pass system from the classroom.
- Provide lessons using mastery learning techniques.
- Adjust the proficiency requirement.
- Provide individual school counseling.
- Begin friendship groups.
- Adapt requirements for graduation.
- Provide teachers with counseling, emphasizing positive attitudes.

CEREBRAL PALSY
EXAMPLE: The student has serious difficulties with fine and gross motor skills. A wheelchair is used for mobility. Cognitive skills are very good. The condition is substantially limiting to the major life activity of walking.

POSSIBLE ACCOMMODATIONS:

- Provide assistive technology devices (computer).
- Arrange for use of ramps and elevators.
- Allow for extra time between classes.
- Assist with carrying books, lunch trays, etc.
- Adapt physical education curriculum.
- Provide for physical therapy.
- Monitor medication administration.
- Modify eating utensils.
- Initiate an emergency health care plan.
- Educate peers/staff.

Guidelines for Educators

DRUGS AND ALCOHOL
EXAMPLE: The student has used drugs and alcohol for many years. This problem has affected the major life activities of learning and caring for one's self. The student is presently not using drugs or alcohol and is in a rehabilitation program. If the student is not using drugs or alcohol, he/she could qualify for accommodations under Section 504/ADA. The condition is substantially limiting to the major life activity of learning.

POSSIBLE ACCOMMODATIONS:

- Provide texts and assignments to treatment facility.
- Arrange for periodic home-school contacts.
- Establish daily/weekly journal.
- Communicate with treatment facility.
- Provide/arrange for counseling.
- Establish peer support group.
- Dismiss from school for treatment without punitive measures.
- Ensure stronger link with school counselor.
- Form Alateen chapter.
- Furnish individual counseling services.
- Integrate a student assistance program into the classroom.
- Inservice staff.

EMOTIONALLY DISTURBED
EXAMPLE: A student who is emotionally disturbed may need an adjusted class schedule to allow time for regular counseling or therapy. The condition is substantially limiting to the major life activity of learning.

POSSIBLE ACCOMMODATIONS:

- Administer medication.
- Approve early dismissal to attend therapy.
- Maintain weekly/daily journals; self-recording of behavior.
- Establish home-school communication system.
- Schedule periodic meetings with home and treatment specialists.
- Provide carry over of treatment plans into school environment.
- Assist with agency referrals.
- Develop behavior management programs.
- Write contracts for student behavior.
- Post rules for classroom behaviors; teach expectations.
- Provide counseling, social skills instruction.
- Ensure agency/school collaboration.

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- Educate other students/staff/school personnel.
- Provide carryover treatment plans into home environment.
- Reinforce positive behavior.
- Schedule shorter study and work periods according to attention span expected.
- Be consistent.

EPILEPSY
EXAMPLE: The student is on medication for seizure activity, but experiences several grand mal seizures each month. The condition is substantially limiting to the major life activity of learning.

POSSIBLE ACCOMMODATIONS:

- Train staff and students and prepare an emergency plan.
- Provide medical monitoring.
- Monitor and/or distribute medications.
- Change seating.
- Provide rest time and academic considerations following seizure.
- Arrange buddy system.
- Provide an alternative recess.
- Provide education for peers.
- Inservice staff.
- Plan for academic make-up work, so individual can catch up with peers.

LEUKEMIA
EXAMPLE: The student has recently been diagnosed with leukemia and requires frequent hospitalization. The condition is substantially limiting to the major life activity of learning and caring for one's self.

POSSIBLE ACCOMMODATIONS:

- Send a teacher/tutor to the student's home.
- Send a teacher/tutor to the hospital as needed.
- Provide the student with a shorter school day.
- Make needed accommodations during physical education/recess.
- Provide rest areas.
- Have medical services and medication at school.
- Supply the proper diet.
- Furnish counseling.

Guidelines for Educators

OBESITY (METABOLIC DISORDER)
EXAMPLE: A student has an extreme eating disorder that may require special accommodations. Obesity may be considered a disability under Section 504/ADA when it substantially impairs the major life activities of walking and breathing.

POSSIBLE ACCOMMODATIONS:

- Provide special seating modifications.
- Make dietary modifications.
- Adjust meals schedule.
- Adapt physical education program.
- Provide proper and safe transportation to and from school.
- Allow extra time to get to classes.
- Educate peers.
- Modify rest rooms.
- Begin a peer support group.
- Allow more passing time.
- Ensure privacy for self-care.
- Provide counseling.
- Provide for elevator privileges or other accommodations–for example individuals in wheelchairs or with other disabilities that prevent them from using stairs.
- Arrange classroom furniture to provide room to negotiate and move around classroom seating.
- Select and implement a building level support team for the reduction of stress.
- Arrange for peer counseling/helping to deal with esteem issues; also peer attitudes, teasing, etc.
- Address busing concerns to ensure room on buses for seating.
- Arrange to provide opportunities for the individual to participate in intramural events.
- Provide proper and safe transportation to and from school.
- Have proper medications available.
- Have a health nurse monitor medications.
- Make any class location changes that may be needed.
- Provide out-of school support.
- Adjust attendance policy.
- Obtain homebound services.

ORTHOPEDICALLY IMPAIRED
EXAMPLE: The student has limited mobility and is confined to a wheelchair. The condition is substantially limiting to the major life activity of walking.

POSSIBLE ACCOMMODATIONS:

- Develop a health care and emergency plan.
- Implement an adaptive physical education program.
- Provide physical therapy at school.
- Check facilities regarding physical accessibility.
- Provide extra time to get to class.
- Supply a set of textbooks for home.
- Provide a copy of classnotes from a peer.
- Practice emergency exit from school building.

PARENT WITH HEARING IMPAIRMENT
EXAMPLE: A parent is hearing impaired and requests access to school sponsored activities. The school makes accommodations by providing interpreter services for the parent to participate effectively in school sponsored events or meetings about the student.

POSSIBLE ACCOMMODATIONS:

- Provide an interpreter for all school events of expected participation.
- Make arrangements for home-school contacts/communication.
- Assist with locating peer or support groups.
- Use written notes for communication.
- Provide information on assistive technology.

STUDENT FORMERLY RECEIVING SPECIAL EDUCATION SERVICES
EXAMPLE: The student has exited from a special education program, but still needs some academic accommodations to function in a general classroom due to a disability.

POSSIBLE ACCOMMODATIONS:

- Network; plan with all staff.
- Schedule regular review by building level support team.
- Maintain ongoing monitoring of progress; notify staff.
- Establish daily/weekly progress reports.
- Allow for academic modifications.

Guidelines for Educators

- Mentor.
- Use Title I services.
- Provide after school tutoring.
- Provide peer tutoring.
- Ask for student feedback.
- Ask for parent feedback.
- Provide journal activities.
- Adjust homework assignments.
- Have student work toward more independent achievement of assignments within a structured environment (build self-esteem).
- Contact previous special education teachers.
- Review files of progress reports and see what plans were successful.
- Check transition plan.
- Inservice staff.

STUDENT WITH SPECIAL HEALTH CARE NEEDS
EXAMPLE: The student has a special health care problem and requires clean intermittent catheterization twice each day. This procedure empties the bladder and helps prevent urinary tract infections and possible wetting. The school is required to provide trained personnel to perform the procedure, or to provide the student a private location to perform the procedure. The condition is substantially limiting to the major life activity of caring for one's self.

POSSIBLE ACCOMMODATIONS:

- Apply universal precautions.
- Provide trained personnel to perform special procedures.
- Provide student with private location and time to perform procedures.
- Involve school nurse, parents, teachers, and staff.
- Allow preferential seating.
- Adapt recess, physical education, and transportation.
- Modify classroom environment.
- Re-evaluate/update periodically.
- Develop health care and emergency plan.
- If necessary, modify attendance policy.
- Establish health alert–every staff member involved with this student is aware of the health problem and of proper procedures.
- Provide a beeper/paging system for trained personnel.
- Make available homebound services/instruction.
- Begin a disability awareness program upon parent or student request.
- Provide school counseling.
- Arrange for trained personnel on school field trips.
- Arrange for inservice to other students.

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TEMPORARILY DISABLED
EXAMPLE: A student was in an automobile accident and will be homebound and/or hospitalized for a period of time. The student is considered temporarily disabled under Section 504/ADA and should receive accommodations.

POSSIBLE ACCOMMODATIONS:

- Provide duplicate sets of texts.
- Provide assignments to hospital school.
- Tape lessons.
- Provide homebound instruction.
- Schedule periodic home-school meetings.
- Arrange for student to leave class early to get to next class.
- Provide access to elevators.
- Excuse from or adapt physical education program.
- Arrange for a friend to assist student in getting from class to class (support network).
- Provide an interactive system – computer, e-mail, TV.
- Organize counseling – trauma from accident.
- Provide "grounds" maintenance at school.
- Provide physical therapy.
- Arrange for a tutor.
- Make transportation available.
- Arrange for proper medication.
- Arrange for peer notes.
- Provide help with getting lunch tray.
- Change seating arrangements to accommodate needs.
- Adapt assignments depending on disability.
- Adapt completion of assignment.
- Allow more time allowed for test completion.
- Allow shortened days, adjust attendance policy.
- Address special accommodations of a wheelchair.
- Inservice staff and class and prepare an emergency care plan.
- Switch classrooms to main floor.
- Test verbally.
- Provide peer assistance for social involvement (keep child informed of social activities).
- Furnish life-skill assistance.
- Supply school nurse services.

Guidelines for Educators

TOURETTE'S SYNDROME
EXAMPLE: The student exhibits inappropriate gestures and sounds in the classroom and hallways. The condition is substantially limiting to the major life activity of learning.

POSSIBLE ACCOMMODATIONS:

- Pair with a neighboring student to prevent tardiness or absenteeism.
- Provide student with a means of catching up on missed lessons.
- Pair with a fellow student for study.
- Educate other students about associated outbursts.
- Arrange for frequent parental interaction.
- Medication administration.
- Begin a chip system.
- Provide supervision for transition activities.
- Teach strategies about how to compensate.
- Adapt assignments.
- Provide alternative work space.
- Initiate time out.
- Cue student of inappropriate behavior.
- Provide peer inservice.
- Furnish supervision while student is acting out.
- Inservice teachers about different discipline procedures.
- Provide appropriate space for the child to act out episode.
- Make staff and students aware "with parental involvement."

TUBERCULOSIS
EXAMPLE: The student contracted tuberculosis two years ago and has been under treatment. The disease is no longer infectious, but the student is still weak. The condition is substantially limiting to the major life activity of caring for one's self.

POSSIBLE ACCOMMODATIONS:

- Adjust length of school day.
- Provide home tutor, as necessary.
- Inservice staff on problems that might arise with the student.
- Have the medical evaluator provide feedback to staff.
- Monitor the student's behavior and report changes to nurse immediately.
- Encourage student to stay in school as much as possible, as illness permits.
- Provide an alternative place for recess during cole weather.
- Have student evaluated periodically.
- Inservice students.

QUESTIONS AND ANSWERS

Guidelines for Educators

1. Q. **When does the 2nd and 3rd prong of the Section 504/ADA definition become relevant?**

   2nd Prong - Has a record of an impairment.

   3rd Prong - Is regarded as having an impairment.

   A. A person who falls under the second or third prong of the definition of a person with a disability is entitled to Section 504 protection only if discriminatory action has been taken against the person and is based on the fact that he/she has a "record of" or is "regarded as" disabled. The mere fact that a person has a "record of" or is "regarded as" being disabled is insufficient, by itself, to trigger Section 504 protections.

2. Q. **Are slow learners eligible for Section 504/ADA accommodations or services?**

   A. "Slow learning" is not a disability. If a slow learner cannot cope with the general education, the curriculum or instructional approach can be adapted to meet the ability and pace of the student. It should be noted that the student could have a disability; for example, an attention deficit disorder and also be a slow learner. The ADD could entitle the student to Section 504/ADA services.

3. Q. **Who should serve on the Section 504 Committee?**

   A. A practice that has worked for many schools is the utilization of the Student Problem Solving Team as the Section 504 Committee. This team is usually knowledgeable about the student and is familiar with interventions that have been successful and strategies that have failed. The Student Problem Solving Team will usually include:

      A. Parent(s)
      B. Student, when appropriate
      C. Principal or designee
      D. Classroom teacher(s)
      E. Others as appropriate

4. Q. **Can a school use the special education IEP form to document Section 504 accommodations and services?**

   A. The Office for Civil Rights has commented that the IEP would fulfill Section 504/ADA requirements. It is suggested, however, that Section 504 accommodations and services be documented on the forms contained in Appendix B of these guidelines.

5. Q. **How does free appropriate public education differ between Section 504/ADA and special education?**

   A. In special education, a student must be eligible under one of the thirteen disability categories and need special education before he/she is entitled to receive services. The definition for eligibility under Section 504 is very broad and could include any physical or mental impairment which substantially limits a major life activity. The student could receive accommodations, services **and/or** related services. Some students could receive just a related service, such as physical therapy or counseling.

6. Q. **Who conducts evaluations to determine Section 504/ADA eligibility?**

   A. Many students who are eligible for Section 504/ADA services have medical conditions that have already been diagnosed. In these instances the school would request permission from the parents to obtain copies to document the Section 504 eligibility. Where the school conducts the evaluation, special education staff or other support staff may be involved. Most schools pay a portion of the salary and benefits of special education staff and could justify the use of these individuals to conduct 504/ADA evaluations.

7. **Q. When students exit special education, should they be considered for Section 504/ADA eligibility?**

   A. YES. Section 504 eligibility shall be a team decision and will depend on the unique needs of the student. Many exiting special education students will not require Section 504/ADA accommodations or services. If the team decides to consider Section 504/ADA eligibility, a referral would be made to the Section 504 Committee for determination.

   Special education students who are graduating from high school and moving on to post-secondary opportunities should be considered for Section 504 services. Post-secondary programs receiving federal funds are under the same obligations as schools.

8. **Q. Where can parents or the school receive technical assistance regarding Section 504 issues?**

   A. There are several sources of technical assistance for parents and school including the following:

   1. School Section 504/ADA Coordinator.
   2. LEA District Level Section 504 Coordinator.
   3. Kansas State Department of Education.
   4. Regional Office for Civil Rights, Kansas City, MO.

9. **Q. To what extent should parents be involved in the Section 504/ADA process?**

   A. The Section 504 regulations do not specify the degree of parent participation. It is always best practice to involve parents every step along the way in their child's educational program. It is recommended that parents receive notice whenever their child is singled out for evaluation, eligibility or service delivery. Written consent should be obtained before evaluations and services. The parents should be invited to participate in all Section 504/ADA meetings regarding their child.

10. **Q. Can the Section 504 Committee recommend modifications to an eligible student's graduation requirements?**

    A. YES, as long as the recommendation is reasonable and related to the student's disability. For example, a student with a severe physical disability might not be capable to participate and fulfill physical education graduation requirements. Adapted physical education would be a modification for the physical education requirement. Schools are encouraged to develop alternative options rather than totally waive a course requirement.

11. **Q. Are all students with attention deficient disorder eligible for Section 504/ADA services?**

    A. NO. Neither IDEA nor Section 504 allow for automatic eligibility. Although many students who have been diagnosed with ADD/ADHD **do** qualify for Section 504/ADA services, others do not. Many students who have been diagnosed with ADD/ADHD are either on medication and/or have been taught and apply compensatory skills to successfully function in a school environment and may not require Section 504/ADA services. The question under Section 504 is whether the identified disability results in a substantial limitation in a major life activity.

    Some students with ADD/ADHD will be eligible for special education services if they were first found to be eligible for special education under the categories of learning disability, other health impaired, emotionally disturbed, or traumatic brain injury.

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If the student has a mental or physical disability which substantially limits a major life activity (learning in the case of ADD/ADHD), then the student would qualify for Section 504/ADA accommodations and/or services.

12. **Q. What are the consequences for a school that refuses to meet Section 504/ADA obligations?**

    A. The parents could file a local grievance with the school, request a due process hearing, take the school to court, or file a complaint with the Office for Civil Rights. The office is part of the U.S. Department of Education. The regional office is located at 10220 No. Executive Hill Blvd., 8th Floor, Kansas City, MO. Consequences could include money damages, attorney fees, and the loss of federal funds. Mediation might be used to assist in resolving disputes between parents in the school.

13. **Q. Should a school document and keep a Section 504/ADA file on each eligible student?**

    A. YES. Even though Section 504/ADA regulations are silent on the issue of documentation except for evaluation results, it is best practice to document the Section 504/ADA services. Files should be kept on eligible students. This file should be separate from the cumulative file, to avoid possible discrimination based on the record. Section 504/ADA files would be under all requirements listed in the Family Educational Rights and Privacy Act (FERPA).

14. **Q. Who pays the costs for Section 504/ADA services?**

    A. Services are the responsibility of the school district. There is no federal funding for Section 504 services.

15. **Q. Can a school require a medical statement for students for whom they cannot pinpoint a medical or physical impairment that is substantially limiting a major life activity within the schools and for which assistance is needed in the school?**

    A. A school cannot require a parent or student to provide a medical statement *if* the school suspects that the student has a disability that would necessitate the provision of general or special education and related aids and services under the regulations implementing Section 504 of the Rehabilitation Act of 1973. However, a school is not required to evaluate a student who the school does not believe has a disability, e.g. a mental or physical impairment which substantially limits a major life activity, such as learning. A school is required to conduct an evaluation of any person who, because of disability, needs, or whom the school believes to need, general or special education and related aids and services. (a) If a school determines, based on the facts and circumstances of the individual case, that a medical assessment is necessary to make an appropriate evaluation consistent with 34 CFR §104.35(a) and (b), the school must ensure that the student receives this assessment at no cost to the parents. If alternative assessment methods meet the evaluation criteria, these methods may be used in lieu of a medical assessment. If a district does not believe that a student has a disability and refuses to evaluate the child, the district must inform the parents of their due process rights under 34 CFR §104.36.

16. **Q. Are schools required to provide the food when dietary modifications are needed? Or do parents provide the food and the school prepare it (like with medication)?**

    A. It depends. A school, in providing any aid, benefit, or service, may not deny or afford a person with a disability an opportunity to participate in, or benefit from, an aid, benefit, or service, such as the provision of food services, that is not equal to, or as effective as, that provided to persons without disability. The recipient also is required to provide free appro

priate public education to each qualified person with a disability. The provision of an appropriate education is the provision of general or special educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met. Unlike medicine, which the school is not required to provide for any student, if the school provides food to students generally, it would also have to provide an appropriate lunch to the student with disabilities who has special dietary needs on the same basis that food is provided to students without disabilities. Depending on the circumstances, the school may have to provide special foods to meet the individual needs of the student with disabilities. This responsibility is determined on a case-by-case basis.

17. **Q. Are schools responsible for providing services to students enrolled in private schools?**
    A. Section 504 does not require the public school to provide services in the private school. 34 CFR §104.33(c)(4).

18. **Q. For students who are referred to special education but do not qualify under IDEA criteria, do they automatically become Section 504 students?**
    A. No. Under Section 504, a "person with disabilities" is defined as any person who has a physical or mental impairment which substantially limits a major life activity. Thus, depending on the severity of their condition, students who do not meet the standards under Part B of the Individuals with Disabilities Education Act (IDEA) may or may not fit within the Section 504 definition. It is not automatic.

19. **Q. Can a student be identified as IDEA eligible and be receiving some services under IDEA, and also be identified as a Section 504 student and be receiving different assistance in the general classroom under Section 504? If the child is eligible for IDEA for the disability, shouldn't they receive all services for their disability under IDEA?**
    A. IDEA requires that a district serve all the needs of an identified child with a disability. Therefore, the child's IEP under IDEA should address all of the child's needs.

20. **Q. It is clear that a parent can take the school to a hearing regarding their Section 504 student. Can a district take a parent to hearing as well?**
    A. Yes. For instance, if a student is receiving services the school thinks are necessary for the provision of a free appropriate public education under Section 504, and the parent decides he/she no longer wants the child to receive the services, the school cannot simply accede to the parent's wishes. It *must* use the Section 504 due process hearing requirements or other proceedings if the school believes the student needs the services.

21. **Q. If a student is identified as in need of modifications/services under Section 504, and the parent decides to home-school the child, is the school still responsible for providing services in the home?**
    A. No. Where a school has offered an appropriate education, the school is not responsible, under Section 504, for the provision of educational services to students not enrolled in the public educational program based on the personal choice of the parent or guardian.

22. **Q. Section 104.33(b) speaks to "related aids and services." What is the difference between this and 104.34(a) "supplemental aid and services?" Section 104.33(b) speaks to "general or special education and related aids and services," whereas 104.35 speaks to "special education or related services...in a general or special education program." Please provide clarification as to the meaning of these phrases and how they are to be interpreted.**

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A. Under Section 504, the meaning of the terms "related aids and services" and "supplemental aids and services" is identical, and the terms are interchangeable. The phrases "general or special education and related aids and services" in Section 104.35(a) and "special education or related services...in a general or special education program" also have identical meaning.

23. **Q. If a Section 504 student is, due to his disability, constantly disruptive on the school bus, can the school have the student's bus privileges removed if she/he needs the transportation to get to school? If so, must the school still provide transportation: How about when the student is a threat to the safety of other students on the bus?**

A. For a student with disabilities, any incident of misconduct on the bus may be viewed in the same manner as any disciplinary incident in the school. A school cannot revoke needed transportation services just as a school can not suspend a student with disabilities in excess of 10 days or, in some cases, impose cumulative suspensions exceeding 10 days without taking a number of prior actions. A school can change the mode or method of providing transportation services if a student with disabilities is endangering himself or others, just as the school can place a student with disabilities in a more restrictive setting if the student becomes dangerous.

24. **Q. Is there a transition requirement under Section 504?**

A. No. There is a transition requirement under IDEA but not Section 504. Those students only protected under Section 504 do need, at a minimum, the documentation of their disability and the accommodations that have been provided to them in their secondary setting. It is advised that all schools inform students with disabilities that they may be eligible for protections under Section 504 and the ADA.

In a landmark case *(Yankton School District v. Schramm,* 23 IDELR 42, D.S.D. 1995), the school district attempted to declassify a special education high school student with cerebral palsy, claiming that she no longer needed special education services under IDEA in order to complete her secondary education; any services that were required fell under Section 504 only. The parents argued that if the court found the special services fall under Section 504 only, their daughter would not be entitled to receive the transition services she needed to promote success in a post-secondary educational setting. The 8th Circuit found that the services not included in the student's last IEP did constitute special education, and stated, "without these specially designed instruction and related services, the student's ability to learn and perform in school would be adversely affected by her orthopedic impairment." **A lesson for school districts: if you are going to go through with the declassification, you should strongly consider the inclusion of transition services in a proposed Section 504 plan.**

25. **Q. How should the local school district operationalize the concept of "substantially limits"?**

A. Not every student with a disability will qualify for and need services under Section 504. The actual presence of an identified disability is not sufficient, in and of itself, to qualify a student as eligible for protection under Section 504. Just as "adverse effect on educational performance" must be proven under IDEA, so must there be clear evidence of a "substantial limitation of a major life activity" under Section 504.

The Americans with Disabilities Act provides some assistance in interpreting the phrase "substantially limits".

(Sec. 1630.2(j)(1).

Thus, for the purpose of this discussion, it is suggested that the term "substantially limits" be interpreted to mean that the student is unable to perform a major life activity that the average student of approximately the same age can perform, or that the student is significantly restricted as to the condition, manner or duration under which a particular major life activity is performed as compared to the average student of approximately the same age.

26. **Q. What disciplinary requirements exist in Section 504?**

A. Section 504/ADA provides civil rights protections. Denial of access, and/or a significant change in placement, should not occur when there is a definable nexus or relationship between the misconduct and the disability. Negative action must not be taken against a student for misconduct that is a product of the disability. The student's 504 team should meet and make this decision. A reevaluation should be conducted prior to any significant change in placement.

Section 512(a) of the ADA amended Section 504 to allow schools to take disciplinary action against students with disabilities to the same extent as it would take action against non-disabled students in areas pertaining to the use or possession of illegal drugs or alcohol. Under this language, OCR has issued policy guidance which recognizes that students who are disabled by drug addiction or alcoholism may be disciplined to the same extent as other students, but that a student who is disabled by some other condition in addition to drug addiction or alcoholism must be evaluated and afforded due process prior to disciplinary action that would constitute a significant change in placement.

There is no requirement in Section 504 for the continuation of FAPE following the expulsion of a student. However, school districts should be aware of specific state regulations which may address the continuation of services for any student who may be denied attendance at a public school site due to disciplinary infractions.

27. **Q. What due process rights are required under Section 504?**

A. Section 504 provides a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the individual to examine relevant records, an impartial hearing with the opportunity for participation by the individual's parents or guardian, representation by counsel, and a review procedure. Be aware that these rights are somewhat limited when compared with the procedural safeguards available under IDEA. A district may choose to use the same system of due process procedures that are in place under IDEA; however it is recommended that the pros and cons of this decision be carefully researched prior to implementation.

28. **Q. What are the requirements for the school district in the provision of a Section 504 hearing?**

A. The district is responsible for choosing and providing an impartial hearing officer. The training of this hearing officer in regard to the Section 504 statute, regulations and case law should be thoroughly explored and validated by the district. It should not be assumed that an IDEA hearing officer is sufficiently knowledgeable in Section 504 issues.

Representation by counsel is a right of the parent or guardian.

The district is also responsible for development of a review process. This process is intended to validate that the decision made by the hearing officer was indeed based upon the facts presented.

APPENDICES

APPENDIX A

Section 504 of The Rehabilitation Act of 1973 -- Regulations

Guidelines for Educators

TITLE 34—EDUCATION

Subtitle B – Regulations Of The Offices Of The Department Of Education
Chapter I — Office For Civil Rights, Department Of Education
Part 104 — Nondiscrimination On The Basis Of Handicap In Programs Or Activities Receiving Federal Financial Assistance

Subpart A — General Provisions

104.1 Purpose.
104.2 Application.
104.3 Definitions.
104.4 Discrimination prohibited.
104.5 Assurances required.
104.6 Remedial action, voluntary action, and self-evaluation.
104.7 Designation of responsible employee and adoption of grievance procedures.
104.8 Notice.
104.9 Administrative requirements for small recipients.
104.10 Effect of state or local law or other requirements and effect of employment opportunities.

Subpart B — Employment Practices

104.11 Discrimination prohibited.
104.12 Reasonable accommodation.
104.13 Employment criteria.
104.14 Preemployment inquiries.

Subpart C — Program Accessibility

104.21 Discrimination prohibited.
104.22 Existing facilities.
104.23 New construction.

Subpart D — Preschool, Elementary, and Secondary Education

104.31 Application of this subpart.
104.32 Location and notification.
104.33 Free appropriate public education.
104.34 Educational setting.
104.35 Evaluation and placement.
104.36 Procedural safeguards.
104.37 Nonacademic services.
104.38 Preschool and adult education.
104.39 Private education.

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SUBPART A TO PART 104 - GENERAL PROVISIONS

Subpart A — General Provisions

§ 104.1 Purpose.

The purpose of this part is to effectuate Section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 104.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Education and to the program or activity that receives or benefits from such assistance.

§ 104.3 Definitions.

As used in this part, the term:

(a) *The Act* means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) *Section 504* means section 504 of the Act.

(c) *Education of the Handicapped Act* means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) *Department* means the Department of Education.

(e) *Assistant Secretary* means the Assistant Secretary for Civil Rights of the Department of Education.

(f) *Recipient* means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) *Applicant for assistance* means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) *Federal financial assistance* means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

Guidelines for Educators

Subpart A to Part 104 - General Provisions

§ 104.3 Definitions. (*continued*)

(j) *Handicapped person* — (1) *Handicapped persons* means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) *Physical or mental impairment* means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) *Is regarded as having an impairment* means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) *Qualified handicapped person* means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool, elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under Section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

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PART 104 - GENERAL PROVISIONS

§ 104.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii)Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv)Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that re-

Subpart A to Part 104 - General Provisions

§ 104.4 Discrimination prohibited. (*continued*)

(5 continued) ceives Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Aid, benefits or services limited by Federal law.* The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

§ 104.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right

§ 104.5 Assurances required. (*continued*)

(3 continued) purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 104.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of Section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of Section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of Section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii)Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request:

(i) A list of the interested persons consulted,

(ii) A description of areas examined and any problems identified, and

(iii)A description of any modifications made and of any remedial steps taken.

Guidelines for Educators

Subpart A to Part 104 - General Provisions

§ 104.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of Section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to § 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 104.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons.

Kansas State Department of Education

SUBPART B TO PART 104 - EMPLOYMENT PRACTICES

§ 104.11 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs or activities assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 104.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program

Guidelines for Educators

Subpart B to Part 104 - Employment Practices

§ 104.12 (*continued*)

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:

(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 104.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 104.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job related functions.

§ 104.14 (*continued*)

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 104.6 (a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 104.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, *Provided*, That:

(1) All entering employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Guidelines for Educators

Subpart C to Part 104 - Program Accessibility

§ 104.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 104.22 Existing facilities.

(a) *Accessibility.* A recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare, or other social service providers.* If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicappped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

§ 104.22 (*continued*)

(3) Specify the schedule for taking the steps necessary to achieve full accessibility in order to comply with paragraph (a) of this section and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and

§ 104.23 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, Section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with phusical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

Guidelines for Educators

Subpart D to Part 104 - Preschool, Elementary, and Secondary Education

§ 104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

§ 104.32 Location and notification.

A recipient that operates a public elementary or secondary education program or activity shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

§ 104.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.

(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education* — (1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

§ 104.33 (*continued*)

(2) *Transportation.* If a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the aid, benefits, or services operated by the recipient.

(3) *Residential placement.* If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available, in conformance with the requirements of this section and §104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of §104.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

§ 104.34 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

Guidelines for Educators

Subpart D to Part 104 - Preschool, Elementary, and Secondary Education

§ 104.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with §104.34.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

§ 104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

Subpart D to Part 104 - Preschool, Elementary, and Secondary Education

§ 104.37 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of §104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

§ 104.38 Preschool and adult education.

A recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided.

§ 104.39 Private education.

(a) A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in §104.33(b)(1), within that recipient's program or activity.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that provides special education shall do so in accordance with the provisions of §§ 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of §§ 104.34, 104.37, and 104.38.

APPENDIX B

Sample Forms

Information for Parents Regarding Section 504 of the Rehabilitation Act of 1973

Section 504 is an Act which prohibits discrimination against persons with a disability in any program that receives federal financial assistance. The Act defines a person with a disability as anyone who:

> *Has a mental or physical impairment that substantially limits one or more major life activities (major life activities include activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working).*

In order to fulfill its obligations under Section 504/ADA, the _____ _____ recognizes a responsibility to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person with a disability will knowingly be permitted in any of the programs and practices in the school system.

The school has specific responsibilities under the Act, which include the responsibility to identify, evaluate and, if the student is determined to be eligible under Section 504/ADA, to afford access to appropriate educational services.

If the parent or guardian disagrees with the determination made by the professional staff of the school, he/she has a right to a hearing with an impartial hearing officer.

The Family Educational Rights and Privacy Act (FERPA) also specifies rights related to educational records. This Act gives the parent or guardian the right to:

- Inspect and review his/her child's educational records;
- Obtain copies of these records;
- Receive a list of all individuals having access to those records;
- Ask for an amendment to any report on the grounds that it is inaccurate, misleading, or violates the child's rights;
- A hearing on the issue if the school refuses to make the amendment.

If there are questions, please feel free to contact

_____

Section 504/ADA Compliance Coordinator

_____

Phone

SECTION 504 REFERRAL

Student: _____ Date: _____

School: _____ Date of Birth: _____

Teacher: _____ Grade: _____

Parent: _____ Phone: _____

Address: _____

Referred by: _____

Position: _____

1. Reason for referral: _____

_____

_____

_____

2. Accommodations and interventions attempted (Student Intervention Team (SIT))

_____

_____

_____

_____

_____

3. Has the student ever been referred, evaluated and/or received services from special education?

___YES ___ NO

If yes, explain: _____

_____

_____

4. Referral action: _____

_____

_____

_____

_____ _____

Student Intervention Team (SIT) Member Date

_____ _____

Section 504 Coordinator Date

NOTICE
SECTION 504 MEETING

Student: _____ Date: _____

School: _____

Dear Parent or Guardian:

This letter is to inform you that we have some concerns about your child's progress at school. We have attempted some interventions with your child. They include:

We would like to arrange a meeting to discuss eligibility for further accommodations/services in order to ensure that _____ is afforded an appropriate education. We have scheduled a meeting on _____. This meeting will be held at _____ to discuss your child's educational needs. We would very much appreciate your participation.

If you have any questions, or if this meeting time is not convenient for you, please call me at _____. We will discuss your questions or arrange a mutually convenient meeting time.

Sincerely,

_____

Name Position

WRITTEN CONSENT
SECTION 504 STUDENT AND PARENT RIGHTS

School:_____ Date:_____

The following is a description of student and parent rights granted by federal law. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

YOU HAVE THE RIGHT TO:

1. Have your child take part in, and receive benefits from public education programs without discrimination based on a disability.
2. Have the school advise you as to your rights under federal law.
3. Receive written notice with respect to identification, evaluation, or placement of your child.
4. Have your child receive a free appropriate public education. This includes the right to be educated with other students without disabilities to the maximum extent appropriate. It also includes the right to have the school make reasonable accommoda tions to allow your child an equal opportunity to participate in school and school-related activities.
5. Have your child educated in facilities and receive services comparable to those provided students without disabilities.
6. Have your child receive accommodations under Section 504 of the Rehabilitation Act of 1973.
7. Have evaluation, educational, and placement decisions made based upon a variety of information sources, and by individuals who know your child, the evaluation data, and placement options.
8. Have transportation provided to a school placement setting at no greater cost to you than would be incurred if the student were placed in a program operated by the school.
9. Give your child an equal opportunity to participate in non-academic and extracurricular activities offered by the school.
10. Examine all records relating to decisions regarding your child's identification, evaluation, educational program, and placement.
11. Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records.

12. Receive a response from the school to reasonable requests for explanations and interpretations of your child's records.
13. Request amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading or otherwise in violation of the privacy rights of your child. If the school refuses this request, it shall notify you within a reasonable time, and advise you of the right to a hearing.
14. Request an impartial due process hearing related to decisions regarding your child's identification, evaluation, educational program, or placement. You and your child may take part in the hearing and have an attorney represent you.
15. File a local grievance or complaint to the Office for Civil Rights in Kansas City, Missouri. The office is part of the U.S. Department of Education. The regional office is located at 10220 N. Executive Hills Blvd., 8th Floor, Kansas City, Missouri 64153, (816) 880-4200, (816) 891-0582 (TDD, (816) 891-0644 FAX.

The person at the school who is responsible for Section 504/ADA compliance is:

_____	_____
Section 504 Coordinator	Telephone Number

I give written consent to have my child evaluated for possible Section 504 eligibility.

_____	_____
Parent signature	Date

Evaluation Procedures:

Evaluation	To be performed by
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Section 504 Evaluation Procedures

If the school suspects a student has a disability, then parental notice is given and an individual evaluation is conducted. The following are some considerations for meeting 504 evaluation requirements.

1. The school could use special education evaluation staff or other evaluators as assigned. Determination of who will conduct the evaluation should be made by the school administrator. The evaluation team must be knowledgeable about the student, disability, and be familiar with the evaluation data and placement options.
2. Each evaluation should be tailored to the specific needs of the student.
3. The parents need to be notified before the evaluation is conducted. Consent is not required, but is considered best practice. (IDEA requires consent)
4. Tests and other evaluation materials should be validated for the specific purpose for which they are used and administered by trained personnel in conformance with the instructions provided by their producer.
5. Tests and other evaluation materials include those tailored to assess specific areas of educational need.
6. Tests are selected to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the results accurately reflect whatever the test is designed to measure.
7. In interpreting evaluation data and in making placement or accommodation decisions, a school should draw upon information from a variety of sources, including aptitude and achievement tests, interest inventories, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.
8. A reevaluation should be conducted before making any significant change in placement. A reevaluation procedure consistent with the individuals with Disabilities in Education Act is one means of meeting this requirement.

The school may refuse to conduct an evaluation, but has the obligation to inform the parents of the reasons for the refusal and their right to file a grievance, contact the Office for Civil Rights, or request a due process hearing.

SECTION 504 TEAM MEETING SUMMARY

Student: _____ Date:_____ Grade: _____

School: _____ Birthdate: _____

Address: _____ Phone: _____

Case Manager: _____

PARTICIPANTS - Staff knowledgeable about the student, disability, and the results of the evaluation data.

SUMMARY OF EVALUATION DATA - Information from a variety of sources, including, as relevant, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.

DETERMINATION OF WHETHER THE STUDENT HAS A DISABILITY UNDER SECTION 504

_____ The student does not have a physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

_____ The student has a physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

PART II STUDENT ACCOMMODATIONS

Accommodation 1: _____

Accommodation 2: _____

Accommodation 3: _____

Accommodation 4: _____

DURATION OF ACCOMMODATION(S) From _____ To _____
Review/Reassessment Date: _____

Participants

Name	Title	Date

Placement for Services _____

I give permission for my child to receive the above mentioned services.

_____
Parent Date

SECTION 504/ADA
STUDENT ACCOMMODATION PLAN

Student: _____ Date: _____
School: _____ DOB: _____
Review: _____

PART 1: JUSTIFICATION FOR SERVICES

1. Is the student disabled under Section 504?

☐ YES ☐ NO

The Student has a physical or mental impairment which substantially limits one or more of his/her major life activities.

☐ YES ☐ NO

- ☐ caring for one's self
- ☐ performing manual tasks
- ☐ walking
- ☐ seeing
- ☐ breathing
- ☐ hearing
- ☐ speaking
- ☐ working
- ☐ learning
- ☐ other:

Describe areas of need and action to be taken:

_____
_____
_____
_____
_____
_____

2. Briefly document the basis for determining the disability:

_____
_____
_____
_____
_____
_____

Area of Difficulty: _____

_____

Accommodations: _____

_____

Evaluation: _____

_____

Area of Difficulty: _____

_____

Accommodations: _____

_____

Evaluation: _____

_____

Area of Difficulty: _____

_____

Accommodations: _____

_____

Evaluation: _____

_____

Area of Difficulty: _____

_____

Accommodations: _____

_____

Evaluation: _____

_____

I give permission for my child to receive the above mentioned services.

_____

Parent Date

ACCOMMODATION AND SERVICE PLAN

Student:_____ Date: _____

Case Manager:_____

Explanation of Section 504 Eligibility:

_____

_____

_____

_____

Check each area where special accommodations/services will help the student meet success at school.

- ❒ Seating
- ❒ Writing
- ❒ Space
- ❒ Physical Education
- ❒ Problem Solving
- ❒ Communication
- ❒ Assignment Completion
- ❒ Note Taking
- ❒ Spelling
- ❒ Organization
- ❒ Assistive Devices
- ❒ Time
- ❒ Interpersonal Skills
- ❒ Listening
- ❒ Reading
- ❒ Vocabulary
- ❒ Math
- ❒ Test Taking
- ❒ Memory
- ❒ Homework
- ❒ Other_____

ACCOMMODATIONS AND SERVICES

1._____

_____

_____

_____

2. _____

_____

_____

_____

3. _____

_____

_____

_____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

I give permission for my child to receive the above mentioned services.

_____

Parent Date

SECTION 504 COMMITTEE MEMBERS

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

SECTION 504 REVIEW OF SERVICES

Student: _____ Date: _____

Case Manager: _____

PURPOSE OF MEETING: It is necessary to periodically review the student's progress under Section 504 services and make recommendations to continue, modify or terminate the program(s). (504 plan should be reviewed once each year)

DISCUSSION OF PROGRESS: _____

_____

_____

_____

RECOMMENDATION

[ ] Continue present services with no changes.

[ ] Modify the present program (see attached).

[ ] Exit from program based upon the following evaluation results.

DISCUSSION OF RECOMMENDATIONS: _____

_____

_____

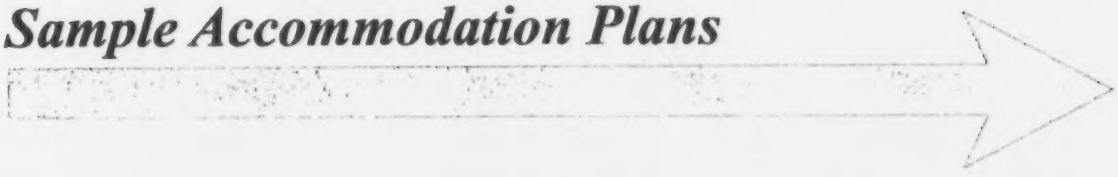
_____

The following members of the Section 504 Committee agree with the recommendations.

_____	_____
Parent	Counselor
_____	_____
Classroom Teacher	Student
_____	_____
School Principal	Other

APPENDIX C

Sample Accommodation Plans



SECTION 504/ADA
STUDENT ACCOMMODATION PLAN

Student: Debra _____ Date: 9/20/01 _____
School: Jefferson _____ DOB: 10/11/91 _____
Review: 9/18/02 _____

PART 1: JUSTIFICATION FOR SERVICES

1. Is the student disabled under Section 504?
☑ YES ☐ NO

The Student has a physical or mental impairment which substantially limits one or more of his/her major life activities.
☐ YES ☐ NO

☐ caring for one's self	☐ hearing
☐ performing manual tasks	☐ speaking
☐ walking	☐ working
☐ seeing	☑ learning
☐ breathing	☐ other:

Describe areas of need and action to be taken:
1. Organization
2. Social Skills
3. Prioritizing Academic Skills

2. Briefly document the basis for determining the disability:

Debra is a non-hyperactive attention deficit disorder student. Teacher and parents have both voiced concerns about her lack of social skills that appear to inhibit her social success. She is under Dr. Pullman's care and is being treated with an anti-depressant due to her ADHD undifferentiated type and generalized anxiety.

Area of Difficulty: Debra is extremely disorganized, losing or forgetting essentials for classroom success, i.e., books, pencils, papers, etc.

Accommodations: Debra will have her books and materials placed in a visible place within color coded hanging files. There will be a check-off sheet attached to her desk that she can use to insure the proper folder materials, etc., for each respective class.

Evaluation: _____

Area of Difficulty: Debra only reaches out to two of her peers. She demonstrates poor eye contact, muffled speech, and social withdrawal from most of her classmates.

Accommodations: Debra will be included in a small group social skills class with classmates and the elementary counselor. A self-monitoring and teacher-monitoring program will be implemented to work on the small group social skills.

Evaluation: _____

Area of Difficulty: Debra has difficulty prioritizing academic work. Frequently she will not be working on tasks that are due, but will be working on the subject she likes best (art) instead.

Accommodations: Each morning before classes start, Debra's teacher and she will review the day's schedule and prioritize from most important to least important the tasks to complete. Social and tangible reinforcers will come from the teacher.

Evaluation: _____

Area of Difficulty: _____

Accommodations: _____

Evaluation: _____

I give permission for my child to receive the above mentioned services.

_____

Parent Date

SECTION 504/ADA
STUDENT ACCOMMODATION PLAN

Student: Deloris _____ Date: 10/25/01 _____
School: Jefferson _____ DOB: 5/12/89 _____
Review: 10/25/02 _____

PART 1: JUSTIFICATION FOR SERVICES

1. Is the student disabled under Section 504?

☑ YES ☐ NO

The Student has a physical or mental impairment which substantially limits one or more of his/her major life activities.

☐ YES ☐ NO

☐ caring for one's self	☐ hearing
☐ performing manual tasks	☐ speaking
☐ walking	☐ working
☐ seeing	☑ learning
☐ breathing	☐ other:

Describe areas of need and action to be taken:

2. Briefly document the basis for determining the disability:

Deloris has developed significant post traumatic stress syndromes following a recent sexual assault. Academic, social, and emotional behaviors appear to be in a state of deterioration. Dr. Sarah P. has presented a workable treatment plan to help us help Deloris while at school.

Area of Difficulty: Deloris was diagnosed by Dr. Sarah P as a post traumatic stress victim while she was hospitalized at the local hospital following a sexual assault.

Accommodations: Deloris' classroom teachers will receive a brief overview of post traumatic stress symptomatology from the guidance counselor.

Evaluation: _____

Area of Difficulty: She is quite erratic in her social behavior, demonstrating noticeable anixety, emotional instability, and acute panic attacks.

Accommodations: Dr. P's comprehensive treatment plan for Deloris at school will be spelled out with possible ways to interact and respond to her as a part of ther treatment plan.

Evaluation: _____

Area of Difficulty: Accumulated homework.

Accommodations: Deloris will be given an extended amount of time to make up her work due to acquired comprehension difficulties.

Evaluation: _____

Area of Difficulty: Feeling victimized and all alone.

Accommodations: Deloris will miss her last period study hall to attend a PTS group at the local hospital.

Evaluation: _____

I give permission for my child to receive the above mentioned services.

_____

Parent Date

SECTION 504/ADA
STUDENT ACCOMMODATION PLAN

Student: Susan _____ Date: 10/14/01 _____
School: Grant _____ DOB: 6/05/86 _____
Review: 10/14/02 _____

PART 1: JUSTIFICATION FOR SERVICES

1. Is the student disabled under Section 504?

☑ YES ☐ NO

The Student has a physical or mental impairment which substantially limits one or more of his/her major life activities.

☐ YES ☐ NO

☐ caring for one's self	☐ hearing
☐ performing manual tasks	☐ speaking
☐ walking	☐ working
☐ seeing	☑ learning
☐ breathing	☐ other:

Describe areas of need and action to be taken:

2. Briefly document the basis for determining the disability:

Susan was recently diagnosed as having depression by Dr. Paul, M.D. She is taking medication under his order. Academic and social concerns have been voiced by staff members and peers. Staff inservicing on depression and how to create a supportive educational milieu will be forthcoming. Because of her academic capabilities ad conscientious work habits, the make-up work accumulated in the past month is overwhelming to her.

Area of Difficulty: Susan has been performing academically quite erratically this year. Her up and down school effort appears to be related to an affective disorder (depression).

Accommodations: Staff inservice regarding clinical depression. Handouts regarding depression in adolescents will also be handed out. Teachers will monitor informally Susan's behavior and contact the school nurse immediately if they see behaviors that concern them.

Evaluation: _____

Area of Difficulty: Susan has missed 20 school days this year due to a recent hospitalization. She feels overwhelmed with all the make-up work.

Accommodations: Susan will be required to make up her homework in those academic areas that require sequential skills. Because of her proficient written language and reading skills, make up in her literature class and English class will be at her leisure.

Evaluation: _____

Area of Difficulty: Susan appears to be withdrawing from peers.

Accommodations: Susan will be encouraged to remain involved. A post-hospitalization peer support group will be offered.

Evaluation: _____

Area of Difficulty: Susan has expressed suicidal ideation to the school nurse.

Accommodations: The school nurse and school guidance counselor will talk with Susan weekly to monitor her affective disorder. The school nurse will send a weekly note to Dr. Paul.

Evaluation: _____

I give permission for my child to receive the above mentioned services.

_____

Parent Date

SECTION 504/ADA
STUDENT ACCOMMODATION PLAN

Student: Pete _____ Date: 9/06/01 _____
School: Anywhere _____ DOB: 9/06/89 _____
Review: 12/04/02 _____

PART 1: JUSTIFICATION FOR SERVICES

1. Is the student disabled under Section 504?

☑ YES ☐ NO

The Student has a physical or mental impairment which substantially limits one or more of his/her major life activities.

☐ YES ☐ NO

☐ caring for one's self	☐ hearing
☐ performing manual tasks	☐ speaking
☐ walking	☐ working
☐ seeing	☑ learning
☐ breathing	☑ other: Dietary

Describe areas of need and action to be taken:

2. Briefly document the basis for determining the disability:

Pete's Crohn's Disease has resulted in excessive absenteeism. Even though he is an excellent student, he has needed summer school the past two years to catch up. The Crohn's episodes appear more intense and frequent over the past year.

Area of Difficulty: Pete has Crohn's disease, an inflammation of his bowels. He has excessive toiletry needs. He will be very anxious any time he is too "far away" from the toileting facilities during excerbations. His Crohn's disease is frequently experienced intermittently. Pete has had multiple hospitalizations and has missed an excessive amount of school.

Accommodations: Pete will notify the teacher or designee when he needs to toilet. He will be responsible for his own toileting needs. After 15 minutes Pete will be checked. Pete will be on steroids administered at home as well as anti-inflammatory drugs. Anagelisius will be given by the school nurse with parent's permissions at Pete's request.

Evaluation: _____

_____

Area of Difficulty: Weight loss and poor nutrition is a medical concern.

Accommodations: School nurse will monitor weight. He will need small, frequent meals with high caloric snacks at least once a day (a.m.) in addition to a modified lunch.

Evaluation: _____

_____

Area of Difficulty: _____

_____

Accommodations: _____

_____

Evaluation: _____

_____

Area of Difficulty: _____

_____

Accommodations: _____

_____

Evaluation: _____

_____

I give permission for my child to receive the above mentioned services.

_____

Parent Date

SECTION 504/ADA
STUDENT ACCOMMODATION PLAN

Student: Delores
School: Adams
Review: 10/03/02

Date: 9/05/01
DOB: 7/07/95

PART 1: JUSTIFICATION FOR SERVICES

1. Is the student disabled under Section 504?

☑ YES ☐ NO

The Student has a physical or mental impairment which substantially limits one or more of his/her major life activities.

☐ YES ☐ NO

☐ caring for one's self	☐ hearing
☐ performing manual tasks	☐ speaking
☐ walking	☐ working
☐ seeing	☐ learning
☑ breathing	☐ other:

Describe areas of need and action to be taken:

2. Briefly document the basis for determining the disability:

Delores is a highly allergic student under Dr. Poegmiller's care. She has missed significant school in earlier years due to allergic reactions. It is critical that Delores be in an environment that is free from terratogens. She may need a modified school diet. Please give Delores' emergency medical care plan to all teachers and staff who will have contact with her during the school day.

Area of Difficulty: Avoidance of irritants (smoke, dust, mold, chemicals)

Accommodations: Preferential seating.

a. Place her away from the chalkboard.

b. Janitor will vacuum and dust the classroom each evening.

c. Place her in an air conditioned classroom.

d. Make sure the air conditioner filter is changed or cleaned monthly.

List the areas in the building where there is a high probability the student will become in contact with toxins.

Evaluation: _____

_____

Area of Difficulty: Potential for anaphylactic reaction.

Accommodations: Emergency medical plan staff training for epipen.

Evaluation: _____

_____

Area of Difficulty: _____

_____

Accommodations: _____

_____

Evaluation: _____

_____

Area of Difficulty: _____

_____

Accommodations: _____

_____

Evaluation: _____

_____

I give permission for my child to receive the above mentioned services.

_____

Parent Date

SECTION 504/ADA
STUDENT ACCOMMODATION PLAN

Student: Travis
School: Anywhere
Review: 10/18/02

Date: 9/20/01
DOB: 3/15/84

PART 1: JUSTIFICATION FOR SERVICES

1. Is the student disabled under Section 504?

☑ YES ☐ NO

The Student has a physical or mental impairment which substantially limits one or more of his/her major life activities.

☐ YES ☐ NO

☑ caring for one's self	☐ hearing
☐ performing manual tasks	☐ speaking
☐ walking	☐ working
☐ seeing	☑ learning
☐ breathing	☐ other:

Describe areas of need and action to be taken:

2. Briefly document the basis for determining the disability:

Travis is a recovering alcoholic who just completed a drug and alcohol program. He is very frightened about relapsing. He has expressed concerns about resisting his old peer group's pressure to drink. Travis wants to go to college and has recently been talking about the helping professions as a vocation.

Area of Difficulty: Travis is having difficulty during the unstructured times at school staying away from his "old druggies peer group," e.g., before and after school as well as the lunchroom.

Accommodations: Travis will report to the guidance office before and after school to help the school counselor create a drug and alcohol prevention brochure for elementary aged students.
Travis will be scheduled into the 1st lunch period to facilitate distance between his old peers.

Evaluation: _____

_____

Area of Difficulty: Travis needs to establish himself with a new peer group.

Accommodations: Travis will explore potential extra-curricular activities to widen his scope of friends with the counselor. Goal setting will be discussed.
Travis will go to the middle school daily during a free period to help with cross-aged tutoring.

Evaluation: _____

_____

Area of Difficulty: _____

_____

Accommodations: _____

_____

Evaluation: _____

_____

Area of Difficulty: _____

_____

Accommodations: _____

_____

Evaluation: _____

_____

I give permission for my child to receive the above mentioned services.

_____

Parent Date

SECTION 504/ADA
STUDENT ACCOMMODATION PLAN

Student: John
School: Anywhere
Review: 9/18/02

Date: 9/20/01
DOB: 8/04/88

PART 1: JUSTIFICATION FOR SERVICES

1. Is the student disabled under Section 504?

☑ YES ☐ NO

The Student has a physical or mental impairment which substantially limits one or more of his/her major life activities.

☐ YES ☐ NO

- ☐ caring for one's self
- ☐ performing manual tasks
- ☐ walking
- ☐ seeing
- ☐ breathing
- ☐ hearing
- ☐ speaking
- ☐ working
- ☑ learning
- ☐ other:

Describe areas of need and action to be taken:

2. Briefly document the basis for determining the disability:

John is a student with attention deficit disorder. He is currently under Dr. Pullman's care and is receiving stimulant medication. His educational history supports Dr. Pullman's diagnosis and places John "at risk educationally."

Area of Difficulty: John has difficulty completing classroom work within the teacher allotted time.

Accommodations: John's assignments will be broken into smaller units. He will use self-monitoring cards on his desk to cue on-task behavior.

Evaluation: _____

Area of Difficulty: John has difficulty reading test questions without becoming frustrated.

Accommodations: John will be given his tests orally. He will be given frequent oral quizzes, not long exams. Recognition test versus recall test will be given when possible.

Evaluation: _____

Area of Difficulty: John is failing to complete his homework assignments.

Accommodations: John will receive a daily progress report to share with his parents as well as teacher prepared homework assignments.

Evaluation: _____

Area of Difficulty: John has poor handwriting skills (inconsistent).

Accommodations: John's daily work will not be graded down due to poor handwriting. He will, however, need to use the computer/tape recorder, etc., for homework as much as possible.

Evaluation: _____

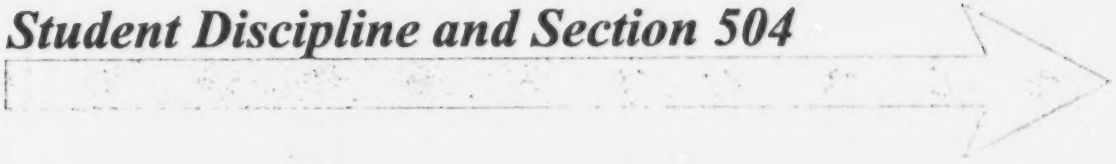
I give permission for my child to receive the above mentioned services.

_____

Parent Date

APPENDIX D

Student Discipline and Section 504



Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability. For example, disciplining a child with a seizure disorder that results from that disability would violate Section 504.

Guidelines for Educators

1. Use of Disciplinary Procedures Applicable to Nondisabled Children. The revised regulation generally restates the new statutory provision allowing the use of disciplinary procedures applicable to nondisabled students when it is determined that the behavior was not a manifestation of the child's disability. The regulation also refers to section 612(a)(1) which specifies that the obligation to provide FAPE applies to individuals with disabilities who have been suspended or expelled (300.524 (a))

2. Transfer of Records (300.524(b)). The revised regulation generally restates the new statutory provision that if the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

3. Stay Put, Pendency (300.524(c)). The revised regulation specifies that the stay put provision is applicable to challenges regarding manifestation determinations.

4. Reference to Section 504. The Analysis states:

> "Under 504 of the Rehabilitation Act of 1973, if the behavior is a manifestation of a child's disability, the child cannot be removed from his or her current educational placement if that removal constitutes a change of placement (other than an 45 day placement under 300.520(a)(2), 300.521, and 300.526(c)), unless the public agency and the parents otherwise agree to a change of placement. If the behavior is related to the child's disability, proper development of the child's IEP should include development of strategies, including positive behavioral interventions, strategies and supports address that behavior, consistent with 300.346(a)(2)(i) and (c). If the behavior is determined to be a manifestation of a child's disability but has not previously been addressed in the child's IEP, then the IEP team must meet to review and revise the child's IEP so that the child will receive services appropriate to his or her needs. Implementation of the behavioral strategies identified in a child's IEP, including strategies designed to correct behavior by imposing consequences, is appropriate under the IDEA and section 504, even if the behavior is a manifestation of the child's disability. However, if a child's IEP includes behavioral strategies to address a particular behavior of the child, the appropriate response to that behavior almost always would be to use the behavioral strategies specified in the IEP rather than to implement a disciplinary suspension. A change in placement that is appropriate and consistent with the child's needs may be implemented subject to the procedural safeguards regarding prior notice (300.503), mediation (300.506), due process (300.507-300.513) and pendency (300.514)."

Kansas State Department of Education

OCR Memorandum (Change in Placement)

Office for Civil Rights
The Honorable Charles E. Smith
Commissioner of Education
Tennessee State Department of Education
100 Cordell Hull Building
Nashville, TN 37219-5335

Digest of Inquiry

[Date Not Provided]

Since an October 1988 policy memorandum from OCR defines a "significant change in placement" as exclusion for an indefinite period, permanently, or for more than 10 *consecutive school days*, may Tennessee revise its current special education rules which define a "significant change in placement" as exclusion for more than 10 school days *per school year?*

Digest of Response

April 24, 1989

OCR Defines Change in Placement, Applies Rules to Bus Suspensions

OCR policy defines a "significant change in placement" as exclusion for more than 10 consecutive school days, rather than 10 cumulative school days per school year. Shorter suspensions may, however, constitute a change in placement triggering due process, if they create a pattern of exclusion which is aimed at avoiding *Honig*. OCR also requires districts to reevaluate handicapped students prior to a significant change in placement to determine whether misconduct is a manifestation of the handicapping condition. If misconduct is not related to the handicapping condition, the student may be expelled and all educational services may be ceased. These disciplinary policies also apply to bus suspensions, whether the student is receiving transportation as a related service in accordance with an IEP, or under a district's regular transportation service.

Text of Response

On March 13-14, 1989, Ms. Maria Dayley of my staff met with Ms. JoLeta Reynolds, Assistant Commissioner of Education, to implement the Memorandum of Understanding (MOU) that the Office for Civil Rights (OCR) has established with your agency. During the meeting, Ms. Reynolds asked Ms. Dayley for technical assistance regarding the discipline of handicapped students. She stated that in 1986, Tennessee changed its policy regarding the discipline of handicapped children after a local advocacy group filed a complaint with OCR regarding this issue. At that time, OCR told the State that a suspension of a handicapped child for more than 10 *cumulative* school days in the school year would constitute a "significant change in placement" as defined by Section 504 of the Rehabilitation Act of

1973 (Section 504) at 34 C.F .R. Section 104.35(a). Prior to such a "significant change in placement," local educational agencies (LEA's) must determine if the behavior triggering the exclusion was caused by or related to the student's handicapping condition.

The Supreme Court's decision in *Honig v. Doe*, issued in January 1988, defines a "significant change in placement" as the exclusion of a handicapped child for an indefinite period, permanently, or for more than 10 *consecutive* school days. On May 23, 1988, you wrote us stating that OCR's policy regarding the discipline of handicapped students was more restrictive than that required by *Honig*. You asked OCR for written permission to revise the State's policy to make it consistent with *Honig*. In a letter dated July 11, 1988, we informed you that the policy concerning the suspension of handicapped students for more than 10 days per school year was under consideration by OCR, and the State should not revise its policy until we reached a determination regarding this issue. In October 1988, OCR issued a policy memorandum providing guidance regarding the discipline of handicapped students. The memorandum defines a "significant change in placement" as exclusion for an indefinite period, permanently, or for more than 10 *consecutive* school days. In light of this memorandum, Ms. Reynolds requested that we reconsider the State's request to change its policy regarding the discipline of handicapped children.

This is to inform you that the Tennessee State Board of Education may change its policy regarding the discipline of handicapped students. To be consistent with OCR policy, the State policy should provide as follows:

1. If a proposed exclusion of a handicapped child is permanent (expulsion) or for an indefinite period, or for more than 10 consecutive school days, the exclusion constitutes a "significant change in placement" under Section 104.35(a) of the Section 504 regulation.

2. If a series of suspensions that are each of 10 days or fewer in duration creates a pattern of exclusions that constitutes a "significant change in placement," the requirements of 34 C.F.R. Section 104.35(a) also would apply. The determination of whether a series of suspensions creates a significant change in placement must be made on a case-by-case basis. In no case, however, may serial short exclusions be used as a means to avoid the Supreme Court's prohibition of suspensions of 10 days or longer. An example of a pattern of short exclusions that would clearly amount to a significant change in placement would be where a child is suspended several times during a school year for eight or nine days at a time. On the other hand, a series of suspensions that, in the aggregate, are for 10 days or fewer is not a significant change in placement. Among the factors that should be considered in determining whether a series of suspensions has resulted in a "significant change in placement" are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the child is excluded from school.

3. In order to implement an exclusion that constitutes a "significant change in placement," a reevaluation of the child must be conducted in accordance with 34 C.F .R. Section 104.35.

4. As a first step in this reevaluation, the school district must determine, using appropriate evaluation procedures that conform with the Section 504 regulation, whether the misconduct is caused by the child's handicapping condition.

5. If it is determined that the handicapped child's misconduct is caused by the child's handicapping condition, the evaluation team must continue the evaluation, following the requirements of Section 104.35 for evaluation and placement, to determine whether the child's current educational placement is appropriate.

6. If it is determined that the misconduct *is not* caused by the child's handicap, the child may be excluded from school in the same manner as similarly situated nonhandicapped children are excluded. In Tennessee, in such a situation, all educational services to the child may cease.

7. When the placement of a handicapped child is changed for disciplinary reasons, the child and his/her parent or guardian are entitled to the procedural protections required by Section 104.36 of the Section 504 regulation; that is, they are entitled to a system of procedural safeguards that includes notice, an opportunity for the examination of records, an impartial hearing (with participation of parents and opportunity for counsel), and a review procedure. Thus, if after reevaluation in accordance with 34 C.F .R. Section 104.35, the parents disagree with the determination regarding relatedness of the behavior to the handicap, or with the subsequent placement proposal (in those cases where the behavior is determined to be caused by the handicap), they may request a due process hearing.

8. The suspension of a handicapped student from transportation may constitute a "significant change in placement" if a school district: has been transporting the student (either under an Individualized Education Program or under the school district's regular transportation policies); suspends the student from the transportation as a disciplinary measure; and provides no other form of transportation. If a handicapped student is suspended from the bus for more than 10 days, this suspension constitutes a "significant change in placement." In order to determine whether a series of suspensions from the bus that are each of 10 days or fewer in duration constitutes a "significant change in placement," the school district needs to apply the same criteria that is used for the disciplinary suspension of a handicapped child from the educational program.

We will be happy to review your revised policies and procedures for the discipline of handicapped students once they are developed. Meanwhile, if you have any questions or if we can be of further assistance, please call Mr. Louis O. Bryson, Sr., Director, Postsecondary Education Division, at (404) 331-2806.

Jesse L. High

Regional Civil Rights Director

Guidelines for Educators

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OCR Staff Memorandum (Expulsion)

Office for Civil Rights

November 13, 1989

William L. Smith Acting Assistant Secretary for Civil Rights

- Discipline, Expulsion
- Placement, Persons Qualified for Placement Decision
- Rehabilitation Act (Section 504), OCR Procedures

Summary

In regard to the expulsion of disabled students, OCR issued a memorandum summarizing the current case law as to the qualifications of persons who make threshold determinations of whether misconduct is related to disability and the criteria to be applied in such determinations. OCR reiterated that a disabled student may not be removed from school for more than ten days without a "manifestation determination" by a group of persons who are, at the minimum, knowledgeable about both the student and special education. OCR further noted that the threshold determination may be made by the same persons who regularly decide placement under the Section 504 regulations. Finally, the manifestation determination must be based on such recent and relevant information which competent professionals would require, including psychological data related to the student's behavior, OCR concluded.

This memorandum supplements guidance entitled, "Long-term' Suspension or Expulsion of Handicapped Students," issued on October 28, 1988. As stated in that memorandum, before implementing a suspension that constitutes a significant change in a handicapped child's placement, a recipient must conduct a reevaluation. As a first step in this reevaluation, the recipient must determine, using appropriate evaluation procedures that conform with the Section 504 regulation, whether the misconduct in question was caused by the child's handicapping condition.[1]

Questions have been raised regarding who should make the threshold determination whether misconduct is caused by the handicapping condition, and what criteria should be applied in making this determination. Since the Section 504 regulation does not speak directly to this issue, case law has been examined for guidance.

Case law

The first appellate decision rendered on the requirements of Section 504 and the Education of

Handicapped Act (EHA) regarding the expulsion of handicapped students held that, "before a handicapped student can be expelled, a trained and knowledgeable group of persons must determine whether the student's misconduct bears a relationship to his handicapping condition." *S-1 v. Turlington*, 635 F.2d 342, 350 (5th Cir.) *cert denied*, 454 U.S. 1030 (1981) (*Turlington*).[2] In a case challenging expulsions that had occurred early in the 1977-78 school year, the court said that "[t]he only way in which the expulsions could have continued [after the EHA became effective] is if a qualified group of individuals determined that *no* relationship existed between the plaintiffs' handicap and their misconduct." *Id.* (emphasis added). The court upheld the district court's ruling that no handicapped student could be expelled for misbehavior related to the handicap, stressing that the burden is on state and local officials to raise the question of handicap relatedness. *Id.* at 349.

The court said that a placement decision (such as expulsion) must be made by the individuals specified in the EHA and Section 504 regulations, and these same individuals should determine whether the misconduct resulted from the handicap (citing favorably a district court decision in the Seventh Circuit, *Doe v. Koger*, 480 F. Supp. 225 (N.D. Ind. 1979) (*Koger*)). The determination may not be made by the individuals responsible for the school's regular disciplinary procedures, such as "school board officials who lacked the necessary expertise to make such a determination." *Id.* at 347. The court cited to Section 504 and EHA regulatory provisions requiring that placement decisions be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

The court provided some guidance on the basis for the determination of causation. First, "[a] determination that a handicapped student knew the difference between right and wrong is *not* tantamount to a determination that his misconduct was or was not a manifestation of his handicap." (emphasis added) *Id.* at 346. Second, a District may not make a categorical determination that misconduct, as a matter of law, is not a manifestation of handicap where the student is not classified as seriously emotionally disturbed or behaviorally handicapped. *Id.* at 346-47.

The next appellate opinion about handicap-related misconduct was *Kaelin v. Grubbs*, 682 F.2d. 595 (6th Cir. 1982), although the sole Issue on appeal was whether an expulsion was a change m educational placement. The court said it was, adopting the Fifth Circuit's rationale in *Turlington*. Similarly citing to Koger, the Sixth Circuit said the placement team must decide whether the child's handicap caused the disruptive behavior. 682 F.2d at 601, 602. Although its decision was based entirely on the EHA, the court referred to the similar procedural protections of Section 504. *Id.* at 597.

Finally, the Ninth Circuit, interpreting the EHA,[3] stated that, before a suspension that constitutes a significant change in placement, a proper determination must be made whether misbehavior is a manifestation of a child's handicap. *Doe v. Maher*, 793 F.2d at 1482. "A 'proper determination' is one that is arrived at by an IEP team according to the correct procedures. ..or, if applicable, by a hearing officer or court on review.'" *Id.* n. 9.

In overturning the district court's ruling that an IEP meeting must be convened *within five days* to consider an expulsion, the Ninth Circuit reasoned that EHA and Section 504 regulations contained no such requirement. Moreover, the IEP team would be "unequipped to evaluate the source of a handicapped student's misconduct until it has obtained the results of a comprehensive evaluation conducted in accordance with 34 C.F.R. § 104.35 ...," and such a complete evaluation could rarely be conducted

within five days. 793 F.2d at 1488. The court thus implied that a determination of handicap-relatedness could not be made on the basis of evaluation data that was almost three years old and existing records of a child's school progress and behavior, as permitted by the California Education Code.

On appeal, the Supreme Court affirmed the decision of the Ninth Circuit, holding that a school district receiving EHA funds may not unilaterally suspend for more than ten days a student who is violent and disruptive because of an emotional problem. The Court did not rule on who should determine handicap-relatedness. *Honig v. Doe*, 108 S. Ct. 592 (1988).

Since the Supreme Court's decision, no Federal court has clarified this issue. One appellate court, while holding that it lacked jurisdiction over a case in which administrative remedies had not been exhausted, noted a state agency determination on the issue, however. In an EDGAR complaint alleging that a handicapped child had been denied academic credit for courses in which he had missed more than 25 percent of the classes, the Rhode Island Department of Education had ruled that a multidisciplinary team must "determine if there was a causal relationship between the misbehavior for which he was being disciplined and his handicap, and if his educational placement was appropriate." *Christopher W. v. Portsmouth School Committee*, 877 F.2d 1089, 1091 (1st Cir. 1989). The Rhode Island Education Department had determined that the handicap appeared to have contributed to the child's absences, and that denial of credit, therefore, would violate Section 504.

To summarize, the courts uniformly require that a determination of whether a handicapped child's misconduct arises from a handicap be made by a group of persons, including individuals personally familiar with the child and knowledgeable about special education. They also unequivocally rule out decisions based on a recipient's normal disciplinary procedures, for example, by the principal or school board. The Fifth, Sixth, Ninth, and Eleventh Circuits (and a district court in the Seventh Circuit) go further, specifying that the determination should be made by the placement team. (No other Federal trial court opinion adds to our understanding of these issues.)

These opinions offer only general guidance on how the determination should be made on whether misconduct is caused by a handicap. The Ninth Circuit would require a comprehensive evaluation in accordance with the Section 504 regulation before deciding whether the misconduct is handicap-related. In light of the professional composition of the group mandated by every court, however, we can infer that the determination must be based on the kind of information necessary to a competent professional decision. For example, the information considered would include psychological evaluation data related to behavior. Further, the relevant data would be recent enough to afford an understanding of the child's current behavior. The opinions also suggest what the causation determination is not. It is not simply a reflection of the child's special education classification (for example, that he is classified "learning disabled," not "behavior disordered"). It is not a determination of whether he knew right from wrong or that she knew her behavior was wrong. It is not sufficient that the procedure satisfies legal requirements for the suspension of nonhandicapped children.

Conclusion

Neither the Section 504 regulation nor the case law provides a simple rule of thumb. Drawing upon the Section 504 regulatory requirements for evaluation and placement at 34 C.F.R. § 104.35 and the case law discussed above, we conclude, nevertheless, that a handicapped child may not be suspended from school for more than ten days unless a recipient has determined that the misbehavior is *not*

a manifestation of his or her handicapping condition. That determination may be made by the same group of people who make placement decisions conforming to the process required by Section 504 regulation. The group must have available to it information that competent professionals would require, such as psychological evaluation data related to behavior, and the relevant information must be recent enough to afford an understanding of the child's current behavior. At a minimum, the group must include persons knowledgeable about the child and the meaning of the evaluation data.

If you have questions about the content of this memorandum, please feel free to contact me or have a member of your staff contact Jean P. Peelen, FTS 732-1641.

1 Following the lead of the Ninth Circuit in *Doe v. Maher*, 793 F.2d 1470, 1480 n. 8 (1986), *aff'd sub nom. Honig v. Doe*, 108 S. Ct. 592 (1988), we regard as synonymous the terms "conduct that arises from the handicap," "conduct that is caused by the handicap," "conduct that is a manifestation of the handicap," "conduct that has a direct and substantial relationship to the child's handicap," and "handicap-related misconduct." A handicapped child's conduct would be covered by this definition if the handicap significantly impairs the child's behaviora.l controls, but would not be covered if it bears only an attenuated relationship to the child's handicap.

2 The decision applies also in the Eleventh Circuit.

3 The court of appeals, relying on the Supreme Court's decision in *Smith v. Robinson*, 468 U.S. 992 (1984)'. reversed the lower court's holding under Section 504. By enacting the Handicapped Children's Protection Act of 1986, 20 U.S.C.A. § 1415(t)(1988), Congress overruled Smith. Thus, EHA may no longer limit rights available under civil rights statutes. Like the Supreme Court in *Honig v. Doe*, the Ninth Circuit cited to the Section 504 regulation at 34 C.F .R. §104.35, despite having said that its ruling relied only on the EHA.

The Fourth Circuit also has ruled that the EHA prohibited a school board from expelling a child whose misbehavior was related to his handicap. However, the opinion does not assist us in understanding how to determine the relationship between the misconduct and the handicap. *School Board of the County of Prince William, Virginia v. Malone*, 762 F.2d 1210 (4th Cir. 1985).

Guidelines for Educators

Discipline of Students with Disabilities in Elementary and Secondary Schools

U.S. Department of Education
Office for Civil Rights
Washington, DC 20202-1328

September 1992

Introduction

In recent years, some public school officials have experienced problems in administering nondiscriminatory disciplinary sanctions in the form of long-term suspension or expulsion of students with disabilities. The Office for Civil Rights (OCR) in the Department of Education (ED) enforces Section 504 of the Rehabilitation Act of 1973, as amended, which protects the rights of students with disabilities in programs that receive Federal financial assistance. This pamphlet summarizes the responsibilities of school officials under Section 504 and the rights of students with disabilities and their parents or guardians in situations requiring disciplinary action that could result in expulsion from or long-term suspension of educational services.

On April 18, 1991, the President announced America 2000: An Education Strategy. It is a bold, complex, and long-range plan designed to move every community toward the six national education goals that the President and the Governors adopted in 1990. Consistent with America 2000, the Office for Civil Rights has instituted a National Enforcement Strategy designed to help protect equal educational opportunity for all students. Nondiscrimination in school discipline is consistent with equal educational opportunity and promotes an environment where all students can learn. The goals enumerated in America 2000, and the National Enforcement Strategy, will help in our nationwide crusade -community by community, school by school- to make America all that it should be.

The Section 504 regulation requires a recipient of federal financial assistance that operates a public elementary or secondary education program to provide a "free appropriate public education" to each qualified persons with disabilities in its jurisdiction.

Under Section 504, an appropriate education is "the provision of regular or special education and related aids and services" and is comprised of the following:

- educational services designed to meet the individual educational needs of students with disabilities and adequately as the needs of students with disabilities are met;
- education of each student with disabilities with nondisabled students, to the maximum extent appropriate to the needs of the student with the disability;
- nondiscriminatory evaluation and placement procedures established to guard against misclassified or inappropriately placed students;

- a periodic reevaluation of students who have been provided special education and related services; and
- due process procedures that:
- give parents notice of all actions related to the identification, evaluation, and placement of a child who is believed to be disabled;
- enable parents and guardians to examine all records relevant to their child's education;
- provide for an impartial hearing to review evaluation and placement decisions, with opportunity for participation by parents and representation by counsel; and
- provide a review procedure for parents who disagree with the hearing decision.

The Individuals with Disabilities Education Act (IDEA), administered by the Office of Special Education in Rehabilitative Services (OSERS), also has provisions requiring states to provide students with disabilities a free appropriate public education (FAPE). Implementation of an individual education program in accordance with the IDEA is one way a school district can meet the FAPE requirements of Section 504.

Suspension and Expulsion of Students with Disabilities

As stated previously, Section 504 requires that a school district evaluate a student with disabilities before making an initial placement of the student in a special education program and any subsequent, significant change in his or her placement. The permanent exclusion of a student with a disability or exclusion for an indefinite period, or for more than 10 consecutive school days, constitutes a "significant change in placement" under Section 504.

A series of suspensions that are each of 10 days or fewer in duration that creates a pattern of exclusions may also constitute a "significant change in placement." The determination of whether a series of suspensions creates a pattern is made on a case-by-case basis. In no case, however, may serial, short exclusions be used to avoid the requirements of reevaluations before suspensions of more than 10 days.

Among the factors considered in determining whether a series of suspensions has resulted in a "significant change in placement" are the length of each suspension, the proximity of the suspension, the proximity of the suspensions to one another, and the total amount of time the child is excluded from school. OCR does not consider a series of suspension that, in the aggregate, are for 10 days or fewer to be a significant change in placement.

Before implementing a suspension or expulsion that constitutes a significant change in placement, a school district must conduct a reevaluation of the student to determine if the misconduct in question is caused by the student's disabling condition or if the student's current educational placement is appropriate. (Reevaluation procedures that comply with the IDEA would fulfill the requirements of Section 504).

Guidelines for Educators

The Reevaluation Process

As a first step in the reevaluation, the district must determine whether the misconduct is caused by the student's disability. The determination may be made by the same group of persons who make initial placement decisions in conformance with the requirements of Section 504. The group must have available to it information that competent professionals would require, such as psychological evaluation data related to behavior, and the relevant information must be recent enough to afford an understanding of the student's current behavior. The determination may not be made by the individuals responsible for the school's regular disciplinary procedures, such as the school principal or school board officials, who may lack the necessary expertise and personal knowledge about the child to make such a determination. These individuals, however, may participate as members of the placement decision group.

If it is determined that the student with a disability's misconduct is caused by the disability, the evaluation team must continue the evaluation, following the requirements of Section 504 for evaluation and placement, to determine whether the student's current educational placement is appropriate. If it is determined that the misconduct is not caused by the student's disability, the student may be excluded from school in the same manner as similarly situation nondisabled students are excluded. In such a situation, Section 504 would permit all educational services to the student to cease.

Due process

When the placement of a student with disabilities is changed for disciplinary reasons, the student and his or her parent or guardian are entitled to the procedural protections required by Section 504. (A school district may use due process procedures that meet the requirements of the IDEA to comply with the Section 504 requirement for procedural safeguards.) This includes appropriate notice to parents, an opportunity for the examination of records, an impartial hearing with the participation of parents and an opportunity for counsel, and a review procedure. Thus, if, after a reevaluation of an initial placement decision, the parents disagree with the determination regarding the relationship of the behavior to the disability, or with the subsequent placement proposal in those cases where the behavior is determined to be caused by the disability. They may request an impartial hearing.

Alcohol and Drug Addiction

Drug and alcohol addition may be a disability covered by Section 504, so long as a person is not a current user of alcohol or illegal drugs.

In July 1990, the Americans with Disabilities Act (ADA) was enacted. That law amended the Rehabilitation Act of 1973 with regard to the disciplining of individuals who engage in illegal use of drugs or in the use of alcohol.

Under the ADA, an individual who is currently engaged in the illegal use of drugs is not a disabled individual under Section 504. However, a person who is addicted to drugs who is no longer engaged in the illegal use of drugs might be disabled and entitled to all of the rights under Section 504. A person erroneously regarded as engaged in the use of illegal drugs might also be regarded as disabled under Section 504.

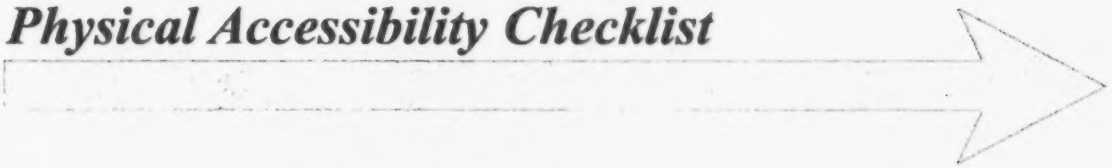
A child who has a disabling condition other than alcoholism or drug addiction and is not engaged in the illegal use of drugs or in the use of alcohol, would have all of his or her rights under Section 504, even with regard to possession of illegal drugs or alcohol. For example, if a mentally retarded child who does not use drugs or alcohol is found in possession of drugs or alcohol, the school district would be required to determine whether this misbehavior resulted from the child's disabling condition.

Additional Information

OCR does not prevent a school from using its normal, reasonable procedures, short of the significant change in placement, for dealing with students who are endangering themselves or other. Where a child presents an immediate threat to the safety of others, officials may promptly adjust the placement or suspend the child for up to 10 school days, in accordance with rules that are applied evenhandedly to all students.

APPENDIX E

Physical Accessibility Checklist



Guidelines for Educators

Checklist to use to Determine Whether Buildings are Accessible for Persons with Physical Disabilities

The following checklist can be used as a guide to complying with the American National Standards Institute and Uniform Federal Accessibility Standards for making buildings accessible to the physically disabled. The following checklist was devised based on both the ANSI and UFAS standards. In some places where UFAS differs from ANSI, both specifications are included. This is particularly so in the use of technical terms.

TYPE OF BUILDING OR PROJECT

1. Is this new construction?
2. Is this an addition?
3. Is this an alteration?
4. Is this an historic preservation building?
5. Is this a leased building?
6. Is this a housing or dwelling unit?

BUILDING SITE/EXTERIOR/ ROUTE

1. Does the grading of the building site allow the approaches to the building to be substantially level?
2. Is there parking within 200 feet of the building entrance?
3. Is any of the parking reserved for the disabled?
4. Are any parking spaces open on one side to allow easy access for wheelchairs and for people who use braces to get in and out of the automobile?
5. Are the parking spaces on level ground?
6. Are there ramps or level spaces to allow people to enter the building without crossing a curb?
7. How many accessible parking spaces are there?
8. Is there an accessible route connecting buildings, facilities, other architectural elements and spaces on the same site?
9. Is there an accessible route within the site from transportation stops, accessible parking spaces, passenger loading zones and public streets/sidewalks?
10. Are ground/floor surfaces free of protruding objects and otherwise accessible?

WALK WAYS

1. Are walks at least 48 inches wide?
2. Is the gradient not greater than a one foot rise in 20 feet (5 percent)?
3. Are walks without interruption (i.e., steps or abrupt changes in level)?
4. If the walks cross a driveway, parking lot or other walks, do they blend into a common level surface?

5. On elevated walks, is there at least a 5 ft. x 5 ft. platform if a door swings out onto the platform or 3 ft. x 5 ft. platform if the door swings in?
6. Do walks have nonslip or slip resistant surfaces?

BUILDINGS-RAMPS

1. Do ramps have a slope no greater than a 1 foot rise in 12 feet (8.33 percent)?
2. If ramps are steeper than a 5 percent gradient rise, a rise of 6 inches, or a horizontal projection of more than 72 inches, are handrails provided?
3. If there are handrails, are they at least 32 inches above ramp surface?
4. Are there handrails on both sides?
5. Are the ramp surfaces smooth?
6. Is the clear width of the ramp at least 36 inches?
7. Do the handrails extend 1 foot beyond the top and bottom of the ramp?
8. Are the ramp surfaces nonslip or slip resistant?
9. Do ramps have a 6 foot clearance at the bottom that is level?
10. Do ramps that have a gradient steeper than 5 percent have level spaces-a minimum of 3 feet in length - at 30-foot intervals?
11. Are these levels rest areas at least 5 feet wide, to provide for turns?
12. Is the cross slope 1 :50 or less?
13. Are edges protected to preclude slipping oft?
14. Will water accumulate on outdoor ramp or approach to it?

BUILDINGS-ENTRANCES/ EXITS

1. Is at least one entrance to the building accessible to people in wheelchairs?
2. Is at least one entrance accessible to wheelchairs on a level that would make the elevators accessible?
3. Is the accessible entrance on an accessible route?
4. Is the service entrance the only accessible entrance?

BUILDINGS-DOORS AND DOORWAYS

1. Do doors have a clear opening at least 32 inches wide?
2. Can doors be opened in a single effort? Can handles, pulls, latches, locks be grasped and operated with one hand?
3. Is the floor of the doorway level within 5 feet from the door in the direction it swings?
4. Does this level space extend 1 foot beyond each side of the door?
5. Does it extend 3 feet in the direction opposite to the door swing?
6. Do thresholds exceed 1/2 inch (3/ inches for exterior sliding doors)?
7. Is the speed of door closers at least 3 seconds so as to allow the use of doors by physically disabled persons?

9. Does the door require more than 5 pounds of pressure to open?
10. Where there are hinged or pivoted doors in a series, are they at least 48 inches plus the width of the swinging inward door path?

BUILDINGS-STAIRS AND STEPS

1. Do the steps avoid protruding lips and abrupt nosings at the edge of each step?
2. Do stairs have handrails at least 32 inches above step level?
3. Will water accumulate on outdoor stairs and approaches?
4. Are tread heights and risers uniform?
5. How many accessible stairs and sets of stairs are there?
6. Do stairs have at least handrails on both sides that extend at least 12 inches beyond the top and at least 19 inches from the bottom step?
7. Do steps have risers 7 inches or less?

BUILDINGS-WARNING SIGNALS/ALARMS

1. Are audible warning signals accompanied by simultaneous visual signals for the benefit of those with hearing and sight disabilities? Are they set at a level not to exceed 120 decibel?
2. Are visual alarms flashing at less than 5 hz?

BUILDINGS-HAZARDS/TACTILE WARNINGS/PROTRUDING OBJECTS

1. When hazards such as open manhole covers, panels and excavation exits on the site, are barricades placed on all open sides at least 8 feet from hazard and warning devices installed?
2. Are there no low-hanging door closers that remain within opening of doorways, or that protrude hazardously or no more than 2 inches into regular corridors or traffic ways?
3. Are there no low-hanging signs, ceiling lights, fixtures, or similar objects that protrude no more than 4 inches into regular corridors or traffic ways?
4. Is lighting on ramps adequate?
5. Are exit signs easily identifiable to all disabled persons?
6. Are there tactile warnings on doors to hazardous areas?
7. Is there at least 80 inches clear head room in walls, halls, corridors, aisles, passageways and circulation spaces?

Kansas State Department of Education

The following items are not contained in the ANSI standards, but are included in the UfAS document.

DWELLING UNITS

1. How many units are accessible?
2. How many units are adaptable?
3. Has consumer information about adaptability been provided to the owner or occupant of the dwellings?
4. Has consumer information been provided to the parties who will be responsible for making adaptations?
5. Does the kitchen have 40 inch clearances at least for cabinets, countertops, appliances, and walls? (U-shaped kitchens: 60 inches)
6. Is there at least 30 x 48 inches clear floor space in the kitchen?
7. Are all controls in the kitchen within reach of a person in a wheelchair?
8. In the kitchen is there at least one 30 inch work surface not more than 34 inches above the ground and at least 2 inches thick?
9. Is the maximum height of the sink 34 inches and the sink and counter width a maximum of 30 inches?
10. Are ranges and cooktops and their controls insulated or otherwise protected to prevent burns, abrasions, or shocks?
11. Is the maximum height for at least one shelf of all cabinets and storage shelves above work counters 48 inches?
12. Are ovens self cleaning with controls on front panels?
13. Are refrigerator/freezers side by side or over and under types?
14. Are dishwater racks accessible from the front of the machine?
15. Are laundry facilities on an accessible route with controls with reach?

FOOD SERVICE AREAS(RESTAURANT/CAFETERIA)

1. Is at least 5% of all fixed seating or tables 27 inches high, 30 inches wide and 19 inches deep for knee clearance and is the table top 28 -34 inches from the floor?
2. Are there accessible aisles?
3. Where there are mezzanine levels, logias, or raised platforms, are the same services and decorative character provided on accessible routes?
4. Do food service lines have a minimum clear width of 35 inches?
5. Are tray slides mounted no higher than 34 inches?
6. Are vending machines within reach and easily operable by persons in wheelchairs?
7. Are tableware, dishware, condiments, foods, and beverages displayed and dispensed within reach of a person in a wheelchair, bearing in mind width, turning space, and clearances?

Guidelines for Educators

HEALTH CARE

1. Is there an accessible entrance to the facility that is protected from the weather by canopy or roof overhang?
2. Does the accessible entrance have an accessible passenger loading zone?
3. Do patient rooms have adequate clear floor and turning space as well as an accessible toilet?

BUILDINGS-FLOORS

1. Do floors have nonslip or slip resistant surface?
2. Are floors on each story at a common level or connected by a ramp?
3. Is carpet (or carpet tile) securely attached?
4. Do grates have a maximum opening of 1/2 inch?

BUILDINGS-RESTROOMS

1. How many toilets for each sex on each floor are there with facilities for the physically disabled?
2. Can physically disabled persons, particularly those in wheelchairs, enter the restroom?
3. Do toilet rooms have turning space 60 x 60 inches to allow traffic of individuals in wheelchairs?
4. Do toilet rooms have at least one toilet stall that:
    a. is 3 feet wide?
    b. is at least 4 feet 8 inches deep?
    c. has a door that is 32 inches wide and swings out?
    d. has handrail on each side, 33 inches high and parallel to floor, 11/2 inches in diameter, with 1-2 inches clearance between rail and wall, fastened securely to wall at the ends and center?
    e. has a toilet seat of 17-19 inches from stand?
5. Do toilet rooms have wash basins with narrow aprons, which when mounted at standard height are no greater than 34 inches at the top and which have a clearance underneath of 29 inches?
6. Are drain-pipes and hot water pipes covered or insulated?
7. Is one mirror as low as possible and no higher than 40 inches above the floor?
8. Is one shelf at a height within range and reach of a person in a wheelchair, and no lower than 15 inches above the floor?
9. Do toilet rooms for men have wall-mounted urinals with the opening of the basin 19 inches (17 inches under UFAS) from the floor, or have floor-mounted urinals that are level with the main floor of the toilet rooms?
10. Are flush controls automatic or hand operated and 44 inches or less from the floor?
11. Do toilet rooms have controls, towel racks and towel dispensers mounted no lower than 15 inches from the floor and otherwise within reach?
12. Are disposal units mounted no higher than 40 inches from the floor?
13. Are towel racks, towel dispensers and other appropriate disposal units located to the side rather than above the basins?
14. Is there a shower or bathtub with an accessible seat, grab bars, controls, and proper spacing?

SECTION 504/ADA 131

BUILDINGS-WATER FOUNTAINS

1. How many drinking fountains are there on each floor for use by physically disabled persons?
2. Can persons in wheelchairs wheel up to fountains?
3. Do water fountains or coolers have up-front spouts and controls?
4. Are they hand-operated?
5. If coolers are wall-mounted, are they hand-operated, with basins 36 inches or less from the floor?

BUILDINGS-PUBLIC TELEPHONES

1. How many public telephones are there in each "bank" accessible to the physically disabled?
2. Is the height of the dial 48 inches or less from the floor?
3. Is the coin slot located 48 inches or less from floor?
4. Is there a clear space of at least 30 x 40 inches to allow forward or parallel approach?
5. Are these telephones equipped for persons with hearing disabilities? Are those telephones identified as such?
6. Are telephone books, if provided, 48 inches or less from the floor?
7. If available, are push button controls provided?

BUILDING, ELEVATOR/LIFTS

1. In more than a one-story building, how many elevators are available to physically disabled?
2. Can physically disabled persons, particularly those in wheelchairs, enter elevator?
3. Are outside call buttons centered 48 inches (42 inches under UFAS) or less from the floor and do they have visual signals?
4. Are control buttons inside at least 3/4 inches raised and located 48 inches or less from floor?
5. Are the buttons labeled with raised (or indented) letters beside them?
6. Are they touch sensitive and easy to push?
7. Is the elevator cab at least 5 ft. x 5 ft.?
8. Are visual and audible signals provided at each elevator group to indicate which car is answering the call?
9. Do jambs, of each elevator, on both sides have raised floor designations?
10. Does the elevator door remain open at least 3 seconds?
11. Can a person in a wheelchair facing the rear see floor numbers (by mirror or floor identification at rear of car)?
12. Are floors announced orally by recorded devices for the benefit of the blind?
13. Are there platform lifts with operable controls, adequate clearances and appropriatesurfaces?

Guidelines for Educators

BUILDINGS- CONTROLS

1. Are light switches not more than 48 inches above the floor?
2. Are controls for heating, cooling and ventilation-not more than 48 inches above the floor?
3. Are controls for fire alarms and other warning devices not more than 48 inches from floor?
4. Are other frequently used controls, such as drapery pulls, etc., not more than 48 inches from floor?
5. Is the force to operate the controls not more than 5 Ibs?
6. Is there clear space to allow a forward or parallel approach by a person in a wheelchair?

BUILDINGS- IDENTIFICATION

1. Are raised (recessed) letters or numbers used to identify rooms or offices?
2. Is identification placed on wall, to right or left of door?
3. Is it at a height between 4 ft. 6 in, and 5 ft 6 in. measured from floor?
4. Are doors that might prove dangerous to a blind person it he or she were to enter or exit through them, made quickly identifiable to the touch?

LIBRARIES

1. Is at least 5% (minimum 1) of fixed seating, tables, study carrels accessible in terms of having seating and work surfaces and allowing passage and use by persons in wheelchairs?
2. Is their at least one lane, including any traffic control. security gate, or turnstile, at each check-out area that is accessible?
3. Is the clear aisle space at card catalogs, magazine displays, and reference stacks at least 35 inches?
4. Is the clear aisle width in the stacks 42 inches if possible (36 inch minimum)?
5. Are all public areas and elements accessible?

SUGGESTED ACCOMMODATIONS STANDARDS CHECKLIST

- Public walks should be at least 48 inches wide and should have a gradient not greater than 5 percent.
- A ramp shall not have a slope greater than 1 foot rise in 12 feet, or 8.33 percent, or 4 degrees 40 minutes.
- At least one primary entrance to each building shall be usable by individuals in wheelchairs.
- Doors shall have a clear opening of no less than 32 inches when open and shall be operable by a single effort.
- Stairs should, whenever possible, and in conformation with existing step formulas, have risers that do not exceed 7 inches.
- Floors shall have a surface that is nonslip.

- Some mirrors and shelves shall be provided above lavatories at a height as low as possible and no higher than 40 inches above the floor, measured from the top of the shelf and the bottom of the mirror.
- Water fountains or coolers shall have up-front spouts and controls.
- An appropriate number of public telephones should be equipped for those with hearing disabilities and so identified with instructions for use.
- Elevators shall be accessible to, and usable by, the physically disabled on the level that they use to enter the building, and at all levels normally used by the general public.
- Switches and controls for light, heat, ventilation, windows, draperies, fire alarms and all similar controls of frequent or essential use, shall be placed within the reach of individuals in wheelchairs.
- Raised letters or numbers shall be used to identify rooms or offices.
- Audible warning signals shall be accompanied by simultaneous visual signals for the benefit of those with hearing disabilities.
- Access panels or manholes in floors, walks and walls can be extremely hazardous, particularly when in use, and should be avoided.

Under the Uniform Federal Accessibility Standard (UFAS) these requirements are amplfied:

- The number of particular item, such as parking spaces, must be provided. Controls must be operable easily and with 5 lb. force or less.
- There must be an accessible route within the facility connecting the spaces and elements.
- Carpets and coverings must be securely attached.
- There are special requirements for kitchens, mercantile areas, library stacks, as well as patient rooms and restaurants.

The above list is a sampling of specifications and standards contained in the UFAS and ANSI. *(American National Standards Institute)*

APPENDIX F

Recent OCR Rulings

RECENT OCR RULINGS

1. Teacher suffering from contagious disease (in this case, tuberculosis) is an individual with a disability. [School Bd. (1987)]
2. District may not terminate a teacher with a contagious disease unless (1) teacher poses demonstrably significant health and safety risks to others and (2) no reasonable accommodation can be made under the circumstances. [School Bd. (1987)]
3. A state is not required to provide special educational services to disabled individual who do not meet its school age requirements. [Williamson County (1988); Iowa Dept. (1984); Stewart (1983)]
4. Barring service dogs may violate § 504 if doing so effectively denies a student with a disability an equal opportunity to participate or benefit from an educational program. [Inquiry of Goodling (1991)]
5. Any school that receives federal funds is under the jurisdiction of OCR. [Riverside (1986)]
6. District was liable for $70,000 in compensatory damages (for pain and suffering) when it discriminated against a teacher with multiple physical disabilities (e.g., she was assigned to the most difficult classes and was not given reasonably adequate assistance). [Recanzone (1988)]
7. Districts failure to provide a hearing-impaired parent with an interpreter so the parent could participate in school-related activity violates § 504. [Sherburne-Earlville (1989)]
8. Student hospitalized by accident qualifies as an individual with a disability and, therefore, is entitled to coverage under § 504 [Lowell Area (1987)]
9. SEA must ensure that each LEA complies with § 504. [Alabama Dept. (1985)]
10. School violated § 504 when it repeatedly (in this case, between seven and eight times per week) sent a student to the principal's office for inappropriate and disruptive behaviors that were manifestations of his disability. [School Administration Unit (1992)]
11. Many of the school's facilities for students with disabilities, such as resource rooms located in portable facilities and speech therapy classes held in storage rooms, violated the comparability requirement of § 504. [Wayne County (1990); Dougherty County (1990)]
12. Establishing a policy of shorter school days for students with disabilities who required special bus transportation violates § 504. [Stafford County (1990); Lafayette (1990); School Dist. (1990); Wexford-Missaukee (1989); Sikeston(1989)]
13. School's failure to provide students with disabilities access to nonacademic or extra-curricular service to the same extent provided to nondisabled students violates § 504. [Richland County (1988)]
14. School's inadequate funding of special education programs, leading to excessive class sizes, lack of related services, and of certified personnel, violates § 504. [Granite (1990)]
15. Schools may not treat children with AIDS differently from nondisabled students in matters of confidentiality. [OCR Staff Memorandum (1990)]

16. School's failure to properly document the results and the procedures of evaluations violates § 504. [Brentwood (1985)]

17. School's failure to designate an employee to coordinate efforts to comply with § 504 and its failure to adopt adequate procedures for handling grievances of individuals with disabilities each violate § 504. [Kensal (1991); Coachella Valley (1985)]

18. Lack of chair lifts necessary for disabled students to access school buses violates § 504; carrying them on to the buses constitutes discrimination. [Kanawha County (1989)]

19. School's policy of using the buddy system, whereby a nondisabled student is responsible for evacuating a hearing-impaired student in cases of emergency, is an acceptable alternate means to a visual alarm system. [Marion County (1985)]

20. New elementary school structure that did not include proper signs for visually impaired persons and an alarm system for hearing-impaired students violated § 504. [Ash Grove (1989)]

21. Insufficient staff, heavy work loads, and inadequate pay to attract qualified personnel are not acceptable excuses for failing to provide students with disabilities with FAPE. [Department of Public Instruction (1988); Sherry (1979)]

22. Repeated suspension of a student diagnosed as having ADHD without consideration of the effect ADHD on his behavior violates § 504. [Brittan (1990); Rialto (1989)]

23. School's refusal to administer medication during the school day to student with ADD or ADHD violates § 504. [San Ramon Valley (1991); Pearl (1991); Fairfield-Suisun (1989)]

24. School's policy of denying special education services at one of its alternate schools violates § 504. [San Francisco (1990)]

25. School must produce IEP that is readily comprehensible to parents; it must be specific, clear, and complete. [Rockford (1987)]

26. School's refusal to hire permanent substitute teacher, aides, and technicians violated § 504 when it failed to implement IEPs. [Oak Park (1986)]

27. School must reimburse disabled student's parents for out-of-pocket expenses incurred to transport him home when alternative transportation was unavailable. [Richmond county (1986)]

28. Failure to demonstrate an educational necessity for separate graduation ceremonies for students with severe disabilities violates § 504. [Aldine (1990)]

29. School's delays, from 61 to 185 days, in completing student evaluations violated § 504. [Philadelphia (1992)]

30. Failure to further evaluate IDEA-eligible (in this case, learning-disabled) student specifically for suspected ADD or ADHD violates § 504. [Rochester School Dist. (1991)]

31. Prior to suspending a disabled student for more than ten consecutive days (or making another significant change in placement), must reevaluate the student to determine (1) whether the misconduct is related to the student's disability, and if so (2) whether the student's placement is appropriate. [St. Mary's (1990); Sioux City (1989); Chesterfield county (1984)]

Guidelines for Educators

32. Districts must evaluate all students with disabilities prior to placement, including children with disabilities covered under § 504 as well as those covered by the IDEA. [Mesa (1988)]

33. Districts must draw from a variety of sources, such as student's medical record, when evaluating the placement needs of a student with a disability. [Elmira City (1986)]

34. When schools develop an IEP to meet the FAPE requirement, its failure to include the child's teacher on the evaluation-development team violates § 504. [Girard (1991)]

35. Districts must reevaluate placement needs of students with disabilities in a timely manner (i.e., at least every three years but more frequently if conditions warrant or it the teacher requests it). [Knox County (1988); Normal (1987); Russell County (1986)]

36. Failure to provide adequate notification to parents of due process hearing, of proposed significant change in placement, and of availability of free or low-cost legal services violated § 504. [School Administration Unit (1991)]

37. District violated § 504 by failing to sufficiently publicize identity of § 504 coordinator, to include notice of evaluation and referral process, and to follow adequate screening procedure. [Hyde Park (1989)]

38. Districts must notify and obtain consent from parents prior to conducting speech and language evaluation of student. [Sachem (1987)]

39. Destruction of student's special education records without parental request or consent violates § 504. [Sachem (1987)]

40. Districts use of pea gravel on elementary school playground, which made it inaccessible to children in wheelchairs, violate §504, [East Windsor (1992)]

41. District did not violate § 504 when staff member applied physical restraint to student only to protect the student from harming himself. [Florence County (1987)]

42. Districts must afford students with disabilities the same opportunity to participate in school's honor roll program as nondisabled students. [Forland (1988)]

43. OCR has the authority to conduct compliance reviews to private schools receiving federal funds. [Timothy (1986)]

44. School district held in contempt and Pennsylvania Department of Education ruled in noncompliance with court's orders. No formal data collection procedure and incomplete data collected. Failure to properly update and complete IEPs. Failure to hire director and assistant director of assistant director of sp ed. 1994 US Dist. LEXIS 18755 (E.D. pa. 1994).

BEST COPY AVAILABLE

Kansas State Department of Education

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

July 25, 2000

Dear Colleague:

On behalf of the Office for Civil Rights (OCR) and the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, we are writing to you about a vital issue that affects students in school - harassment based on disability. Our purpose in writing is to develop greater awareness of this issue, to remind interested persons of the legal and educational responsibilities that institutions have to prevent and appropriately respond to disability harassment, and to suggest measures that school officials should take to address this very serious problem. This letter is not an exhaustive legal analysis. Rather, it is intended to provide a useful overview of the existing legal and educational principles related to this important issue.

Why Disability Harassment Is Such an Important Issue

Through a variety of sources, both OCR and OSERS have become aware of concerns about disability harassment in elementary and secondary schools and colleges and universities. In a series of conference calls with OSERS staff, for example, parents, disabled persons, and advocates for students with disabilities raised disability harassment as an issue that was very important to them. OCR's complaint workload has reflected a steady pace of allegations regarding this issue, while the number of court cases involving allegations of disability harassment has risen. OCR and OSERS recently conducted a joint focus group where we heard about the often devastating effects on students of disability harassment that ranged from abusive jokes, crude name-calling, threats, and bullying, to sexual and physical assault by teachers and other students.

We take these concerns very seriously. Disability harassment can have a profound impact on students, raise safety concerns, and erode efforts to ensure that students with disabilities have equal access to the myriad benefits that an education offers. Indeed, harassment can seriously interfere with the ability of students with disabilities to receive the education critical to their advancement. We are committed to doing all that we can to help prevent and respond to disability harassment and lessen the harm of any harassing conduct that has occurred. We seek your support in a joint effort to address this critical issue and to promote such efforts among educators who deal with students daily.

What Laws Apply to Disability Harassment

Schools, colleges, universities, and other educational institutions have a responsibility to ensure equal educational opportunities for all students, including students with disabilities. This responsibility is based on Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), which are enforced by OCR. Section 504 covers all schools, school districts, and colleges and universities receiving federal funds.[1] Title II covers all state and local entities, including school districts and public institutions of higher education, whether or not they receive federal funds.[2] Disability harassment is a form of discrimination prohibited by Section 504 and Title II.[3] Both Section 504 and Title II provide parents and students with grievance procedures and due

Guidelines for Educators

States and school districts also have a responsibility under Section 504, Title II, and the Individuals with Disabilities Education Act (IDEA),[4] which is enforced by OSERS, to ensure that a free appropriate public education (FAPE) is made available to eligible students with disabilities. Disability harassment may result in a denial of FAPE under these statutes. Parents may initiate administrative due process procedures under IDEA, Section 504, or Title II to address a denial of FAPE, including a denial that results from disability harassment. Individuals and organizations also may file complaints with OCR, alleging a denial of FAPE that results from disability harassment. In addition, an individual or organization may file a complaint alleging a violation of IDEA under separate procedures with the state educational agency.[5] State compliance with IDEA, including compliance with FAPE requirements, is monitored by OSERS' Office of Special Education Programs (OSEP).

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[1]Section 504 provides: "No otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 29 U.S.C. §794(a). See 34 CFR Part 104 (Section 504 implementing regulations).

[2]Title II provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or acitivities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. See 28 CFR Part 35 (Title II implementing regualtions).

[3]The Department of Education's Office for Civil Rights (OCR) has issued policy guidance on discriminatory harassment based on race (see 59 Fed. Reg. 11448 (Mar. 10, 1994). http://www.ed.gov/offices/OCR/race394.html) and sex (see 62 Fed Reg. 12034 (Mar. 13, 1997), http://www.ed.gov/offices/OCR/sexhar00.html). These policies make clear that school personnel who understand their legal obligations to address harassment are in the best position to recognize and prevent harassment, and to lessen the harm to students if, despite their best efforts, harassment occurs. In addition, OCR recently collaborated with the National Association of Attorneys General (NAAG) to produce a guide to raise awareness of, and provide examples of effective practices for dealing with, hate crimes and harassment in schools, including harassment based on disability. See "Protecting Students from Harassment and Hate Crime, A Guide for Schools," U.S. Department of Education, Office for Civil Rights, and the national Association of Attorneys General (Jan. 1999)(OCR/NAAG Harassment Guide), Appendix A: Sample School Policies. The OCR/NAAG Harassment Guide may be accessed on the internet at http://www.ed.gov/pubs/Harassment. These documents are a good resource for understanding the general principle of discriminatory harassment. The policy guidance on sexual harassment will be clarified to explain how OCR's longstanding regulatory requirements continue to apply in this area in light of recent Supreme Court decisions addressing the sexual harassment of students.

[4] 20 U.S.C. § 1400 et. seq.

[5] 34 C.F.R. § 300.660 et. seq.

Harassing conduct also may violate state and local civil rights, child abuse, and criminal laws. Some of these laws may impose obligations on educational institutions to contact or coordinate with state or local agencies or police with respect to disability harassment in some cases; failure to follow appropriate procedures under these laws could result in action against an educational institution. Many states and educational institutions also have addressed disability harassment in their general anti-harassment policies.[6]

Disability Harassment May Deny a Student an Equal Opportunity to Education under Section 504 or Title II

Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

When harassing conduct is sufficiently severe, persistent, or pervasive that it creates a hostile environment, it can violate a student's rights under the Section 504 and Title II regulations. A hostile environment may exist even if there are no tangible effects on the student where the harassment is serious enough to adversely affect the student's ability to participate in or benefit from the educational program. Examples of harassment that could create a hostile environment follow.

- Several students continually remark out loud to other students during class that a student with dyslexia is "retarded" or "deaf and dumb" and does not belong in the class; as a result, the harassed student has difficulty doing work in class and her grades decline.
- A student repeatedly places classroom furniture or other objects in the path of classmates who use wheelchairs, impeding the classmates' ability to enter the classroom.
- A teacher subjects a student to inappropriate physical restraint because of conduct related to his disability, with the result that the student tries to avoid school through increased absences.
- A school administrator repeatedly denies a student with a disability access to lunch, field trips, assemblies, and extracurricular activities as punishment for taking time off from school for required services related to the student's disability.
- A professor repeatedly belittles and criticizes a student with a disability for using accommodations in class, with the result that the student is so discouraged that she has great difficulty performing in class and learning.
- Students continually taunt or belittle a student with mental retardation by mocking and intimidating him so he does not participate in class.

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[6] For more information regarding the requirements of state and local laws, consult the OCR/NAAG Harassment Guide, cited in footnote 3 above.

[7] Appropriate classroom discipline is permissible, generally, if it is of a type that is applied to all students or is consistent with the Individuals with Disabilities Education Act (IDEA) and Section 504, including the student's individualized Education Program or Section 504 plan.

Guidelines for Educators

When disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.

Disability Harassment Also May Deny a Free Appropriate Public Education

Disability harassment that adversely affects an elementary or secondary student's education may also be a denial of FAPE under the IDEA, as well as Section 504 and Title II. The IDEA was enacted to ensure that recipients of IDEA funds make available to students with disabilities the appropriate special education and related services that enable them to access and benefit from public education. The specific services to be provided a student with a disability are set forth in the student's individualized education program (IEP), which is developed by a team that includes the student's parents, teachers and, where appropriate, the student. Harassment of a student based on disability may decrease the student's ability to benefit from his or her education and amount to a denial of FAPE.

How to Prevent and Respond to Disability Harassment

Schools, school districts, colleges, and universities have a legal responsibility to prevent and respond to disability harassment. As a fundamental step, educational institutions must develop and disseminate an official policy statement prohibiting discrimination based on disability and must establish grievance procedures that can be used to address disability harassment. A clear policy serves a preventive purpose by notifying students and staff that disability harassment is unacceptable, violates federal law, and will result in disciplinary action. The responsibility to respond to disability harassment, when it does occur, includes taking prompt and effective action to end the harassment and prevent it from recurring and, where appropriate, remedying the effects on the student who was harassed.

The following measures are ways to both prevent and eliminate harassment:

- Creating a campus environment that is aware of disability concerns and sensitive to disability harassment; weaving these issues into the curriculum or programs outside the classroom.

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[8] Section 504 (at 34 CFR § 104.7) and Title II (at 28 CFR § 35.107(a)) require that institutions have published internal policies and grievance procedures to address issues of discrimination on the basis of disability, which includes disability harassment. While there need not be separate grievance procedures designed specifically for disability harassment, the grievance procedures that are available must be effective in resolving problems of this nature.

- Encouraging parents, students, employees, and community members to discuss disability harassment and to report it when they become aware of it.
- Widely publicizing anti-harassment statements and procedures for handling discrimination complaints, because this information makes students and employees aware of what constitutes harassment, that such conduct is prohibited, that the institution will not tolerate such behavior, and that effective action, including disciplinary action, where appropriate, will be taken.
- Providing appropriate, up-to-date, and timely training for staff and students to recognize and handle potential harassment.
- Counseling both person(s) who have been harmed by harassment and person(s) who have been responsible for the harassment of others.
- Implementing monitoring programs to follow up on resolved issues of disability harassment.
- Regularly assessing and, as appropriate, modifying existing disability harassment policies and procedures for addressing the issue, to ensure effectiveness.

Technical Assistance Is Available

U.S. Secretary of Education has emphasized the importance of ensuring that schools are safe and free of harassment. Students can not learn in an atmosphere of fear, intimidation, or ridicule. For students with disabilities, harassment can inflict severe harm. Teachers and administrators must take emphatic action to ensure that these students are able to learn in an atmosphere free from harassment.

Disability harassment is preventable and can not be tolerated. Schools, colleges, and universities should address the issue of disability harassment not just when but before incidents occur. As noted above, awareness can be an important element in preventing harassment in the first place.

The Department of Education is committed to working with schools, parents, disability advocacy organizations, and other interested parties to ensure that no student is ever subjected to such conduct, and that where such conduct occurs, prompt and effective action is taken. For more information, you may contact OCR or OSEP through 1-800-USA-LEARN or 1-800-437-0833 for TTY services. You also may directly contact the OCR enforcement office at (816) 880-4200 or OSEP at (202) 205-5507 or (202) 205-5465 for TTY services.

Guidelines for Educators
34 IDELR 204
Hoekstra, Letter to (Attention Deficit Disorders)

Office of Special Education and Rehabilitative Services
Honorable Peter Hoekstra Chairman Subcommittee on Oversight and Investigations Committee on Education and the Workforce House of Representatives Washington, DC 20515

Digest of Inquiry
[Date Not Provided]

- What is the role of educators in diagnosing or recommending treatment for students suspected as with ADD or ADHD?

Digest of Response
November 21, 2000

OSERS: Leave diagnosis, treatment of ADD/ADHD up to doctors, families

The DOE emphasized it is *not* the role of the school or the educator to diagnose or make recommendations for treatment of students suspected as with ADD or ADHD. Diagnostic decisions and the decision to prescribe any medication are the responsibility of medical, not educational professionals, after consultation with the family. However, at parents' request, and with their consent, school officials may provide input about a student's behavior that may aid medical professionals in making a diagnosis.
20001121

Dear Congressman Hoekstra:

This is a response to your letter regarding children with attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD). I am sending a similar response to the cosigners of your letter. In your letter, you asked three questions based on the testimony of Judith E. Heumann, Assistant Secretary for Special Education and Rehabilitative Services, before the House Oversight and Investigations Subcommittee of the Education and the Workforce Committee, and a letter written by the Chief Legal Counsel of the Rhode Island Department of Education.

Question 1: Do you agree with the [Rhode Island] letter and the specific statements [regarding the role of educators in diagnosing school children or recommending treatments]?

Yes, the position set out in the Rhode Island letter is consistent with the Department's policy. The Rhode Island letter indicates that State law prohibits the prescription of medication by anyone other than a medical practitioner properly licensed and authorized to prescribe medication and warns educators that educational services cannot be conditioned upon a parent's willingness to medicate his or her child. The Individuals with Disabilities Education Act (IDEA) provisions in no way interfere with a State's right to establish law or set policy with regard to medical diagnoses and prescriptions for treatment. I believe that

the statements made by Assistant Secretary Judith E. Heumann before the Subcommittee are consistent with the position espoused in the Rhode Island letter. As you noted, the Assistant Secretary stated in her testimony that, "[D]iagnostic responsibilities and decisions must be left to physicians and families. Educators can often provide input about the student's behavior that may aid in a diagnosis, but it is *not* the role of the school or the educator to make recommendations for treatment" [emphasis added]. The decision to prescribe any medication is the responsibility of medical, not educational professionals, after consultation with the family and agreement on the most appropriate treatment plan.

Question 2: Has the U.S. Department of Education ever issued such guidance to school personnel across the nation?

The Department has long recognized the need to provide information and assistance to teachers, administrators, parents and other interested persons regarding the identification, evaluation and instructional needs of children with ADD or ADHD. With funds appropriated by Congress in fiscal year 1991, the Department created four centers to analyze and synthesize research literature on ADD and ADHD relating to identification, assessment, and intervention strategies. The information was prepared in formats suitable for educators, parents, and researchers. This information has been disseminated through clearinghouses, as well as Federal, State and local organizations, to parents, educators and administrators, and other interested persons.

In addition, the six regional resource centers authorized under the IDEA worked with State education agencies to catalog effective identification and assessment procedures, as well as intervention strategies, that were being implemented across the country for children with ADD and ADHD. The results of their work have been disseminated to parents, educators, administrators and other interested persons through each of the regional resource centers' networks, as well as by parent training centers, other parent and consumer organizations, and professional organizations.

I am enclosing two specific examples of guidance related to the medical diagnosis or recommendation for treatment of children with or suspected of having ADD or ADHD:

- In 1994, the Chesapeake Institute, under contract from the Office of Special Education Programs, developed a document entitled, *Teaching Strategies: Education of Children with Attention Deficit Disorder*. This document was disseminated to parents, educators, administrators and other interested persons through each of the regional resource centers. On page 8 of this document, under the heading "Understand the Purpose of School-Based Referral," it states that teachers and related services personnel should "[k]eep in mind that educators should not attempt to diagnose attention deficit disorder medically." Moreover, page 12 states that "...the student's parents and physician will decide whether or not the child is to receive medical treatment."
- The Division of Innovation and Development within the Office of Special Education Programs published a technical assistance document entitled, *Attention Deficit Disorder: What Teachers Should Know*. This document has been disseminated to parents, educators, administrators and other interested persons. It remains available to anyone who requests the document.

Guidelines for Educators

These examples state the Department's long-standing policy that medical diagnoses of ADD and ADHD, and related decisions, such as decisions on medication, lie with physicians and families. At parents' request and with their consent, educators may provide input about a student's behavior that may aid medical professionals in making a diagnosis, but it is not the role of educators to attempt to medically diagnose or recommend medical treament for students with ADD or ADHD.

Question 3: Does the Department intend to issue guidance?

The Department believes that in many instances States, such as Rhode Island, are in a better position to address this issue as it arises. The Department, as necessary and appropriate, will continue to provide guidance and technical assistance regarding the limited role of educators in this regard and our policy that medical treatment is a matter for physicians.

I hope this information is helpful and will clarify any misunderstanding of the Department's policy. If the Department may be of further assistance, please let me know.

APPENDIX G

Important OCR Policy Letters

- **CLARIFICATION OF THE 2ND AND 3RD PRONG OF SECTION 504/ADA**
- **OCR FACTS: SECTION 504 COVERAGE OF CHILDREN WITH ADD**

Guidelines for Educators

19 IDELR 894
1 ECLPR ¶ 288

OCR Senior Staff Memorandum (Eligibility)

Office for Civil Rights
August 3, 1992
RICHARD D. KOMER, DEPUTY ASSISTANT SECRETARY

- ⇑ **ELIGIBILITY CRITERIA, IN GENERAL**
- ⇑ Rehabilitation Act (Section 504), Facilities/Persons Covered by Section 504
- ⇑ U.S. Department of Education, Office for Civil Rights (OCR)

SUMMARY

OCR released a memorandum to its senior staff to clarify the second and third prongs of the definition of a "handicapped person" under Section 504. According to the memorandum, a person who falls under either of these prongs of the statutory definition at 29 USC 706(8) is entitled to Section 504 protection only when the alleged discriminatory action is based on the fact that he/she has a "record of" or is "regarded as" handicapped. Unless a person actually has a handicapping condition, the mere fact that he/she has a "record of" or is "regarded as" handicapped is insufficient, by itself, to trigger those Section 504 protections that require special treatment (such as FAPE or reasonable accommodation) of persons with physical or mental impairments that substantially limit one or more major life activities.

It has come to our attention that there are some misperceptions of the purpose and intent of the second and third prongs of the definition of "handicapped person" contained in the Section 504 statute and regulation. The definition of "individuals with handicaps" in the Rehabilitation Act of 1973 at 29 V.S.C. § 706(8)(B) is:

..."individual with handicaps" means, ...any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

The first prong of the definition is clear. A person must have an impairment which substantially limits one or more major life activities. However, a person who falls under the second or third prong of the definition is protected by Section 504 only when negative action is taken based on the fact that he/she has "a record of" or is "regarded as" handicapped.

The reason for the inclusion of the second and third prongs of the definition is explained in the regulation at Section 104.3(j)(2)(iii) and (iv), and is further clarified in Appendix A at ¶ 3. Those two prongs of the definition are legal fictions. They are meant to reach situations where individuals either never were or are not currently handicapped, but are treated by others as if they were. For instance, a person with severe facial scarring may be denied a job because she is "regarded as" handicapped. A person with a history of mental illness may be denied admission to college because of that "record" of a handicap: The persons are

not, in fact, handicapped, but have been treated by others as if they were. It is the negative action taken based on the perception or the record that entitles a person to protection against discrimination on the basis of the assumptions of others.

The use of these prongs of the definition of handicapped person arises most often in the area of employment, and sometimes in the area of postsecondary education. It is rare for these prongs to be used in elementary and secondary student cases. They *cannot* be the basis upon which the requirement for FAPE is triggered. Logically, since the student is not, in fact, mentally or physically handicapped there can be no need for special education or related aids and services.

We have had some indications that there are school districts and state agencies that believe that if a child is "regarded" by someone (the child's doctor or the child's mother, for example) as "handicapped," the "regard" by itself entitles the child to protection under Section 504, and thus triggers the requirement for evaluation. This is not accurate. In such a case, the proper inquiry by the school district upon receiving this information is whether there is "reason to believe" that this child, because of an actual handicap, may need special education or related aids and services, and thus would need to be evaluated. 34 C.F .R. § 104.35. The opinion of the doctor or the mother is a piece of information to be considered in that decision

To summarize: a person who falls under the second and third prongs of the definition of "handicapped person" is entitled to Section 504 protection only when the allegedly discriminatory action is based on the fact that he/she has a "record of" or is "regarded as" handicapped. Unless a person actually has a handicapping condition, the mere fact that he/she has a "record of" or is "regarded as" handicapped is insufficient, by itself, to trigger those Section 504 protections that require special treatment, (such as FAPE or reasonable accommodation), of persons with physical or mental impairments which substantially limit one or more major life activities.

Guidelines for Educators

OCR Facts: Section 504 Coverage of Children with ADD

Question: **What is ADD?**

Answer: Attention Deficit Disorder (ADD) is a neurobiological disability. It is characterized by: attention skills that are developmentally inappropriate; impulsivity; and, in some cases, hyperactivity.

Question: **Are all children with ADD *automatically* protected under Section 504?**

Answer: No. Some children with ADD may have a disability within the meaning of Section 504; others may not. Children must meet the Section 504 definition of disability to be protected under the regulation. Under Section 504, a "person with disabilities" is defined as any person who has a physical or mental impairment which substantially limits a major life activity (e.g., learning). Thus, depending on the severity of their condition, children with ADD mayor *may not* fit within that definition.

Question: **Must children thought to have ADD be evaluated by school districts?**

Answer: Yes. If parents believe that their child has a disability, whether by ADD or any other impairment, and the school district has reason to believe that the child may need special education or related services, the school district must evaluate the child. If the school district does not believe the child needs special education or related services, and thus does not evaluate the child, the school district must notify the parents of their due process rights.

Question: **Must school districts have a different evaluation process for Section 504 and the IDEA?**

Answer: No. School districts may use the same process for evaluating the needs of students under Section 504 that they use for implementing IDEA.

Question: **Can school districts have a different evaluation process for Section 504?**

Answer: Yes. School districts may have a separate process for evaluating the needs of students under Section 504. However, they must follow the requirements for evaluation specified in the Section 504 regulation.

Question: **Is a child with ADD, who has a disability within the meaning of Section 504 but not under the IDEA, entitled to receive special education services?**

Answer: Yes. If a child with ADD is found to have a disability within the meaning of Section 504, he or she is entitled to receive any special education services the placement team decides are necessary.

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Question: **Can a school district refuse to provide special education services to a child with ADD because he or she does not meet the eligibility criteria under the IDEA?**

Answer: No.

Question: **Can a child with ADD, who is protected under Section 504, receive related aids and services in the general educational setting?**

Answer: Yes. Should it be determined that a child with ADD has a disability within the meaning of Section 504 and needs *only* adjustments in the general classroom, rather than special education, those adjustments are required by Section 504.

Question: **Can parents request a due process hearing if a school district refuses to evaluate their child for ADD?**

Answer: Yes. In fact, parents may request a due process hearing to challenge any actions regarding the identification, evaluation, or educational placement of their child with a disability, whom they believe needs special education or related services.

Question: **Must a school district have a separate hearing procedure for Section 504 and the IDEA?**

Answer: No. School districts may use the same procedures for resolving disputes under both Section 504 and the IDEA. In fact, many local school districts and some state education agencies are conserving time and resources by using the same due process procedures. However, education agencies should ensure that hearing officers are knowledgeable about the requirements of Section 504.

Question: **Can school districts use separate due process procedures for Section 504?**

Answer: Yes. School districts may have a separate system of procedural safeguards in place to resolve Section 504 disputes. However, these procedures must follow the requirements of the Section 504 regulation.

Question: **What should parents do if the state hearing process does not include Section 504?**

Answer: Under Section 504, school districts are required to provide procedural safeguards and inform parents of these procedures. Thus, school districts are responsible for providing a Section 504 hearing even if the State process does not include it.

Question: **Where can I find information concerning post-secondary education?**

Answer: Kansas Board of Regents, 1000 SW Jackson Street, Suite 520 Topeka, KS 66612-1368, (785) 296-3421, http://www.kansasregents.org/.

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This document was produced through a collaborative effort between:

THE KANSAS STATE DEPARTMENT OF EDUCATION
120 SE 10TH AVENUE
TOPEKA, KANSAS 66612

CONTRIBUTORS:

Joan Miller, Education Program Consultant

Rod Bieker, General Counsel

and

THE MOUNTAIN PLAINS REGIONAL RESOURCE CENTER
CENTER FOR PERSONS WITH DISABILITIES
1780 NO. RESEARCH PARKWAY, SUITE 112
LOGAN, UTAH 84341

CONTRIBUTOR:

John Copenhaver, Director

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- Recruiting, preparing, supporting and retaining a competent, caring and qualified teacher for every classroom and leader for every school;
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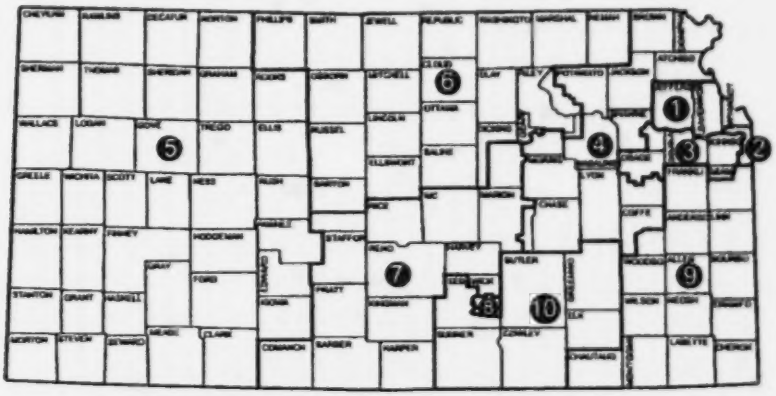

Kansas State Board of Education
Kansas State Education Building
120 S.E. 10th Avenue Topeka, Kansas 66612-1182

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